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CODE OF FEDERAL REGULATIONS

Title 32
National Defense

Parts 800 to End

Revised as of July 1, 2011

Containing a codification of documents
of general applicability and future effect

As of July 1, 2011

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Table of Contents

	Page
Explanation	vi
Title 32:	
SUBTITLE A—DEPARTMENT OF DEFENSE (CONTINUED)	
Chapter VII—Department of the Air Force	5
SUBTITLE B—OTHER REGULATIONS RELATING TO NATIONAL DEFENSE	
Chapter XII—Defense Logistics Agency	265
Chapter XVI—Selective Service System	301
Chapter XVII—Office of the Director of National Intelligence	373
Chapter XVIII—National Counterintelligence Center	407
Chapter XIX—Central Intelligence Agency	445
Chapter XX—Information Security Oversight Office, National Archives and Records Administration	497
Chapter XXI—National Security Council	547
Chapter XXIV—Office of Science and Technology Policy	557
Chapter XXVII—Office for Micronesian Status Negotiations	573
Chapter XXVIII—Office of the Vice President of the United States	583
Finding Aids:	
Table of CFR Titles and Chapters	597

Page

Alphabetical List of Agencies Appearing in the CFR 617

List of CFR Sections Affected 627

Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 32 CFR 806.1 *refers to title 32, part 806, section 1.*

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

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The Paperwork Reduction Act of 1980 (Pub. L. 96–511) requires Federal agencies to display an OMB control number with their information collection request.

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.
July 1, 2011.

THIS TITLE

Title 32—NATIONAL DEFENSE is composed of six volumes. The parts in these volumes are arranged in the following order: Parts 1–190, parts 191–399, parts 400–629, parts 630–699, parts 700–799, and part 800 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of July 1, 2011.

The current regulations issued by the Department of Defense appear in the volumes containing parts 1–189 and parts 190–399; those issued by the Department of the Army appear in the volumes containing parts 400–629 and parts 630–699; those issued by the Department of the Navy appear in the volume containing parts 700–799, and those issued by the Department of the Air Force, Defense Logistics Agency, Selective Service System, National Counterintelligence Center, Central Intelligence Agency, Information Security Oversight Office, National Security Council, Office of Science and Technology Policy, Office for Micronesian Status Negotiations, and Office of the Vice President of the United States appear in the volume containing part 800 to end.

For this volume, Jonn Lilyea was Chief Editor. The Code of Federal Regulations publication program is under the direction of Michael L. White, assisted by Ann Worley.

Title 32–National Defense

(This book contains part 800 to End)

SUBTITLE A—DEPARTMENT OF DEFENSE (CONTINUED)

Part

CHAPTER VII—Department of the Air Force 806

SUBTITLE B—OTHER REGULATIONS RELATING TO NATIONAL DEFENSE

CHAPTER XII—Defense Logistics Agency 1280

CHAPTER XVI—Selective Service System 1602

CHAPTER XVII—Office of the Director of National Intelligence 1700

CHAPTER XVIII—National Counterintelligence Center 1800

CHAPTER XIX—Central Intelligence Agency 1900

CHAPTER XX—Information Security Oversight Office, National Archives and Records Administration 2001

CHAPTER XXI—National Security Council 2102

CHAPTER XXIV—Office of Science and Technology Policy 2400

CHAPTER XXVII—Office for Micronesian Status Negotiations 2700

CHAPTER XXVIII—Office of the Vice President of the United States 2800

Subtitle A—Department of Defense (Continued)

CHAPTER VII—DEPARTMENT OF THE AIR FORCE

SUBCHAPTER A—ADMINISTRATION

Part		*Page*
800–805	[Reserved]	
806	Air Force Freedom of Information Act Program	7
806b	Privacy Act Program	36
807	Sale to the public	73
809a	Installation entry policy, civil disturbance intervention and disaster assistance	74

SUBCHAPTER B—SALES AND SERVICES

811	Release, dissemination, and sale of visual information materials	78
813	Visual information documentation program	80

SUBCHAPTER C—PUBLIC RELATIONS [RESERVED]

SUBCHAPTER D—CLAIMS AND LITIGATION

842	Administrative claims	83
845	Counsel fees and other expenses in foreign tribunals	126

SUBCHAPTER E—SECURITY [RESERVED]

SUBCHAPTER F—AIRCRAFT

855	Civil aircraft use of United States Air Force airfields	130

Part		Page
861	Department of Defense Commercial Air Transportation Quality and Safety Review Program	154
	SUBCHAPTER G—ORGANIZATION AND MISSION—GENERAL	
865	Personnel review boards	168
	SUBCHAPTER H [RESERVED]	
	SUBCHAPTER I—MILITARY PERSONNEL	
881	Determination of active military service and discharge for civilian or contractual groups	195
884	Delivery of personnel to United States civilian authorities for trial	197
887	Issuing of certificates in lieu of lost or destroyed certificates of separation	203
888–888g	[Reserved]	
	SUBCHAPTER J—CIVILIAN PERSONNEL [RESERVED]	
	SUBCHAPTER K—MILITARY TRAINING AND SCHOOLS	
901	Appointment to the United States Air Force Academy	206
903	Air Force Academy Preparatory School	215
	SUBCHAPTERS L–M [RESERVED]	
	SUBCHAPTER N—TERRITORIAL AND INSULAR REGULATIONS	
935	Wake Island Code	221
	SUBCHAPTER O—SPECIAL INVESTIGATION [RESERVED]	
	SUBCHAPTERS P–S [RESERVED]	
	SUBCHAPTER T—ENVIRONMENTAL PROTECTION	
989	Environmental impact analysis process (EIAP)	237

SUBCHAPTER A—ADMINISTRATION

PARTS 800–805 [RESERVED]

PART 806—AIR FORCE FREEDOM OF INFORMATION ACT PROGRAM

Sec.
806.1 Summary of revisions.
806.2 Applicability.
806.3 Public information.
806.4 Definitions.
806.5 Responsibilities.
806.6 Prompt action on requests.
806.7 Use of exemptions.
806.8 Description of requested record.
806.9 Referrals.
806.10 Records management.
806.11 FOIA reading rooms.
806.12 Record availability.
806.13 5 U.S.C. 552 (a)(2) materials.
806.14 Other materials.
806.15 FOIA exemptions.
806.16 For official use only.
806.17 Release and processing procedures.
806.18 Initial determinations.
806.19 Reasonably segregable portions.
806.20 Records of non-U.S. government source.
806.21 Appeals.
806.22 Time limits.
806.23 Delay in responding to an appeal.
806.24 Fee restrictions.
806.25 Annual report.
806.26 Addressing FOIA requests.
806.27 Samples of Air Force FOIA processing documents.
806.28 Records with special disclosure procedures.
806.29 Administrative processing of Air Force FOIA requests.
806.30 FOIA exempt information examples.
806.31 Requirements of 5 U.S.C. 552(b)(4) to submitters of nongovernment contract-related information.

APPENDIX A TO PART 806—REFERENCES
APPENDIX B TO PART 806—ABBREVIATIONS AND ACRONYMS
APPENDIX C TO PART 806—TERMS

AUTHORITY: 5 U.S.C. 552.

SOURCE: 64 FR 72808, Dec. 28, 1999, unless otherwise noted.

§ 806.1 Summary of revisions.

This part makes this guidance an Air Force supplement to the DoD regulation at 32 CFR part 286. It transfers responsibility for the Air Force Freedom of Information Act (FOIA) Program from the Office of the Secretary of the Air Force (SAF/AAI) to Headquarters United States Air Force (HQ USAF/SC) and Headquarters Air Force Communications and Information Center/Corporate Information Division (HQ AFCIC/ITC); contains significant changes and additions to implement the Electronic Freedom of Information Act (EFOIA) Amendments of 1996; addresses electronic records; increases time limits to 20 working days; adds procedures for multiple tracking and expedited processing of requests; changes annual report date and content; adds major command (MAJCOM) inspectors general (IG), MAJCOM Directors of Inquiries (IGQ), and wing commanders as initial denial authorities (IDAs).

§ 806.2 Applicability.

A list of Air Force MAJCOMs, field operating agencies (FOAs), and Direct Reporting Units (DRUs) is at § 806.26.

§ 806.3 Public information.

(a) *Functional requests.* Air Force elements may receive requests for government information or records from the public that do not refer to the FOIA. Often these requests are sent to a public affairs office (PAO) or a specific unit. All releases of information from Air Force records, whether the requester cites the FOIA or not, must comply with the principles of the FOIA and this part. If the requested material contains personal privacy information that the Air Force must withhold, it is particularly important to handle that "functional" request as a request under the FOIA and coordinate it with the appropriate FOIA office and an Air Force attorney. Regardless of the nature of the functional request, if the responding element denies the release of information from Air Force records, then control the request as a FOIA and follow FOIA denial procedures for records withheld (cite the pertinent FOIA exemption and give the requester FOIA appeal rights).

(b) HQ AFCIC/ITC will make the Air Force handbook and guide for requesting records available on the World Wide Web (WWW) from Air ForceLINK, at *http://www.foia.af.mil/handbook.htm.*

§ 806.4 Definitions.

(a) *Electronic reading room (ERR).* Rooms established on Internet web sites for public access to FOIA-processed (a)(2)(D) records.

(b) *FOIA request.* This includes FOIA requests made by members of Congress either on their own behalf or on behalf of one of their constituents. Process FOIA requests from members of Congress in accordance with this Air Force supplement. Air Force-affiliated requesters, to include military and civilian employees, should not use government equipment, supplies, stationery, postage, telephones, or official mail channels to make FOIA requests.

(1) Simple requests can be processed quickly with limited impact on the responding units. The request clearly identifies the records with no (or few) complicating factors involved. There are few or no responsive records. Only one installation is involved and there are no outside Office of Primary Responsibility (OPRs). There are no classified or nongovernment records. No deliberative process/privileged materials are involved. The responsive records contain no (or limited) personal privacy information and do not come from a Privacy Act system of records. No time extensions are anticipated.

(2) Complex requests take substantial time and cause significant impact on responding units. Complications and delays are likely. Records sought are massive in volume. Multiple organizations must review/coordinate on requested records. Records are classified; originated with a nongovernment source; are part of the Air Force's decision-making process; or are privileged.

(c) *Government Information Locator Service (GILS).* GILS is an automated on-line card catalog of publicly accessible information. The Office of Management and Budget (OMB) Bulletin 95–01, December 7, 1994, and OMB Memorandum, February 6, 1998, mandates that all federal agencies create a GILS record for information available to the public. The DoD GILS resides on DefenseLINK, the official DoD home page, at *http://www.defenselink.mil/locator/index.html.*

(d) *Initial denial authority.* Only approved IDAs may deny all or parts of records. FOIA managers may: initially deny fee category claims, requests for expedited processing, and waiver or reduction of fees; review fee estimates; and sign "no records" responses. IDAs are the deputy chiefs of staff and chiefs of comparable offices or higher at HQ USAF and Secretary of the Air Force (SAF), and MAJCOM commanders. Deputy Chiefs of Staff and chiefs of comparable offices or higher at HQ USAF and SAF may name one additional position as denial authority. MAJCOM commanders may appoint two additional positions at the headquarters and also the wing commander at base level. MAJCOM IGs and MAJCOM Directors of Inquiries (IGQ) may act as IDAs for IG records. MAJCOM FOIA managers must notify HQ AFCIC/ITC in writing (by facsimile, e-mail, or regular mail) of IDA position titles. Send position titles only—no names. HQ AFCIC/ITC sends SAF/IGQ a copy of the correspondence designating IDA positions for IG records. When the commander changes the IDA designee position, MAJCOM FOIA managers will advise HQ AFCIC/ITC immediately. In the absence of the designated IDA, the individual filling/assuming that position acts as an IDA, however; all denial documentation must reflect the position title of the approved or designated IDA, even if in an acting capacity (for example, Acting Director of Communications and Information, Headquarters Air Combat Command).

(e) *Office of primary responsibility (OPR).* A DoD element that either prepared, or is responsible for, records identified as responsive to a FOIA request. OPRs coordinate with the office of corollary responsibility (OCR) and FOIA managers to assist IDAs in making decisions on FOIA requests.

(f) *OCR.* A DoD element with an official interest in, and/or collateral responsibility for, the contents of records identified as responsive to a FOIA request, even though those records were either prepared by, or are the primary responsibility of, a different DoD element. OCRs coordinate with OPRs and FOIA managers to assist IDAs in making decisions on FOIA requests.

(g) *Appellate authority*. The SAF has designated the Deputy General Counsel, Fiscal, Ethics, and Civilian Personnel (SAF/GCA) as the FOIA appellate authority.

(h) *Reading room*. Any place where a member of the public may view FOIA records.

§ 806.5 Responsibilities.

(a) The Director, Communications and Information (HQ USAF/SC) has overall responsibility for the Air Force FOIA Program. The Corporate Information Division (HQ AFCIC/ITC) administers the procedures necessary to implement the Air Force FOIA Program, submits reports to the Director, Freedom of Information and Security Review (DFOISR), and provides guidance and instructions to MAJCOMs. Responsibilities of other Air Force elements follow.

(b) SAF/GCA makes final decisions on FOIA administrative appeals.

(c) Installation commanders will: Comply with FOIA electronic reading room (ERR) requirements by establishing a FOIA site on their installation public web page and making frequently requested records (FOIA-processed (a)(2)(D)) records available through links from that site, with a link to the Air Force FOIA web page at *http://www.foia.af.mil*. *See* § 806.12(c).

(d) MAJCOM commanders implement this instruction and appoint a FOIA manager, in writing. Send the name, phone number, office symbol, and e-mail address to HQ AFCIC/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

(e) Air Force attorneys review FOIA responses for legal sufficiency, provide legal advice to OPRs, disclosure authorities, IDAs, and FOIA managers, and provide written legal opinions when responsive records (or portions of responsive records) are withheld. Air Force attorneys ensure factual and legal issues raised by appellants are considered by IDAs prior to sending the FOIA appeal files to the Secretary of the Air Force's designee for final action.

(f) Disclosure authorities and IDAs apply the policies and guidance in this instruction, along with the written recommendations provided by staff elements, when considering what decisions to make on pending FOIA actions. Where any responsive records are denied, the IDA tells the requesters the nature of records or information denied, the FOIA exemption supporting the denial, the reasons the records were not released, and gives the requester the appeal procedures. In addition, on partial releases, IDAs must ensure requesters can see the placement and general length of redactions with the applicable exemption indicated. This procedure applies to all media, including electronic records. Providing placement and general length of redacted information is not required if doing so would harm an interest protected by a FOIA exemption. When working FOIA appeal actions for the appellate authority review:

(1) IDAs grant or recommend continued denial (in full or in part) of the requester's appeal of the earlier withholding of responsive records, or adverse determination (for example, IDAs may release some or all of the previously denied documents).

(2) IDAs reassess a request for expedited processing due to demonstrated compelling need, overturning or confirming the initial determination made by the FOIA manager.

(3) When an IDA denies any appellate action sought by a FOIA requester, the IDA, or MAJCOM FOIA manager (for no record, fee, fee estimates, or fee category appeals) will indicate in writing that the issues raised in the FOIA appeal were considered and rejected (in full or in part). Include this written statement in the file you send to the Secretary of the Air Force in the course of a FOIA appeal action. Send all appeal actions through the MAJCOM FOIA office.

(g) OPRs:

(1) Coordinate the release or denial of records requested under the FOIA with OCRs, FOIA offices, and with Air Force attorneys on proposed denials.

(2) Provide requested records. Indicate withheld parts of records annotated with FOIA exemption. Ensure requesters can see the placement and general length of redactions. This procedure applies to all media, including

electronic records. Providing placement and general length of redacted information is not required if doing so would harm an interest protected by a FOIA exemption.

(3) Provide written recommendations to the disclosure authority to determine whether or not to release records, and act as declassification authority when appropriate.

(4) Make frequently requested records (FOIA-processed (a)(2)(D)) available to the public in the FOIA ERR via the Internet. As required by AFIs 33–129, Transmission of Information Via the Internet, and 35–205, Air Force Security and Policy Review Program, OPRs request clearance of these records with the PAO before posting on the WWW, and coordinate with JA and FOIA office prior to posting. The FOIA manager, in coordination with the functional OPR or the owner of the records, will determine qualifying records, after coordination with any interested OCRs.

(5) Complete the required GILS core record for each FOIA-processed (a)(2)(D) record.

(6) Manage ERR records posted to the installation public web page by updating or removing them when no longer needed. Software for tracking number of hits may assist in this effort.

(h) FOIA managers:

(1) Ensure administrative correctness of all FOIA actions processed.

(2) Control and process FOIA requests.

(3) Obtain recommendations from the OPR for records.

(4) Prepare or coordinate on all proposed replies to the requester. FOIA managers may sign replies to requesters when disclosure authorities approve the total release of records. If the MAJCOM part directs the OPR to prepare the reply, the OPR will coordinate their reply with the FOIA office.

(5) Make determinations as to whether or not the nature of requests are simple or complex where multitrack FOIA request processing queues exist.

(6) Approve or initially deny any requests for expedited processing.

(7) Provide interim responses to requesters, as required.

(8) Provide a reading room for inspecting and copying records.

(9) Provide training.

(10) Review publications for compliance with this part.

(11) Conduct periodic program reviews.

(12) Approve or deny initial fee waiver requests.

(13) Make the initial decision on chargeable fees.

(14) Collect fees.

(15) Send extension notices.

(16) Submit reports.

(17) Sign "no record" responses.

(18) Provide the requester the basis for any adverse determination (i.e., no records, fee denials, fee category determinations, etc.) in enough detail to permit the requester to make a decision whether or not to appeal the actions taken, and provide the requester with appeal procedures.

(i) On appeals, FOIA managers:

(1) Reassess a fee category claim by a requester, overturning or confirming the initial determination.

(2) Reassess a request for expedited processing due to demonstrated compelling need, overturning or confirming the initial determination.

(3) Reassess a request for a waiver or reduction of fees, overturning or confirming the initial determination.

(4) Review a fee estimate, overturning or confirming the initial determination.

(5) Confirm that no records were located in response to a request.

(j) The base FOIA manager acts as the FOIA focal point for the FOIA site on the installation web page.

(k) When any appellate action sought by a FOIA requester is denied by an IDA or FOIA manager for authorized actions, the IDA or FOIA manager will indicate, in writing, that the issues raised in the FOIA appeal were considered and rejected (in full or in part). Include this written statement in the file you send to the Secretary of the Air Force in the course of a FOIA appeal action. Send all appeal actions through the MAJCOM FOIA office.

§ 806.6 Prompt action on requests.

(a) Examples of letters to FOIA requesters (e.g., response determinations and interim responses) are included in § 806.27.

(b) Multitrack processing. (1) Examples of letters to FOIA requesters (e.g.,

letters to individuals who have had their FOIA request placed in the complex track) are included in § 806.27.

(2) Simple requests can be processed quickly, with limited impact on the responding units. The request clearly identifies the records with no (or few) complicating factors involved. There are few or no responsive records, only one installation is involved, there are no outside OPRs, no classified or nongovernment records, no deliberative process/privileged materials are involved, records contain no (or limited) personal privacy information/did not come from Privacy Act systems of records concerning other individuals, or time extensions not anticipated.

(c) Complex requests will take substantial time, will cause significant impact on responding units. Complications and delays are likely. Records sought are massive in volume, multiple organizations must review/coordinate on records, records are classified, records originated with a nongovernment source, records were part of the Air Force's decision-making process or are privileged.

(d) Expedited processing. Examples of letters to individuals whose FOIA requests and/or appeals were not expedited are included in § 806.27.

§ 806.7 Use of exemptions.

(a) A listing of some AFIs that provide guidance on special disclosure procedures for certain types of records is provided in § 806.28. Refer to those instructions for specific disclosure procedures. Remember, the only reason to deny a request is a FOIA exemption.

(b) Refer requests from foreign government officials that do not cite the FOIA to your foreign disclosure office and notify the requester.

(c) If you have a non-U.S. Government record, determine if you need to consult with the record's originator before releasing it (see § 806.9 and § 806.15(c)). This includes records created by foreign governments and organizations such as North Atlantic Treaty Organization (NATO) and North American Aerospace Defense (NORAD). You may need to coordinate release of foreign government records with either the U.S. Department of State or with the specific foreign embassy, directly through the MAJCOM FOIA office. Coordinate release or denial of letters of offer and acceptance (LOA) with SAF/IA through 11 CS/SCSR (FOIA), 1000 Air Force Pentagon, Washington DC 20330–1000.

§ 806.8 Description of requested record.

Air Force elements must make reasonable efforts to find the records described in FOIA requests. Reasonable efforts means searching all activities and locations most likely to have the records, and includes staged or retired records, as well as complete and thorough searches of relevant electronic records, such as databases, word processing, and electronic mail files.

§ 806.9 Referrals.

(a) Send all referrals through the FOIA office. The receiving FOIA office must agree to accept the referral before transfer. The FOIA office will provide the name, phone number, mailing address, and e-mail address of both the FOIA office point of contact and the record OPR point of contact in their referral letter. Include the requested record. If the requested records are massive, then provide a description of them. Referrals to, or consultations with, DFOISR are accomplished from the MAJCOM level. Section 806.27 has an example of a referral memo.

(b) In some cases, requested records are available from the GPO and NTIS, 5285 Port Royal Road, Springfield VA 22161. These organizations offer certain records for sale to the public. Current standard releasable Air Force publications are available electronically on the WWW at *http://afpubs.hq.af.mil/*. For requesters without electronic access, NTIS has paper copies for sale. Give requesters the web address or NTIS address when appropriate. However, if the requester prefers to pursue the FOIA process, consult with HQ AFCIC/ITC through the MAJCOM. Refer FOIA requests for Air Force publications that are classified, FOUO, rescinded, or superseded to the OPR through the appropriate FOIA office.

§ 806.10 Records management.

Keep records that were fully released for 2 years and denied records for 6

years. Include in the 6-year record file copies of records or parts of records that were released in response to the same request. Refer to Air Force Manual (AFMAN) 37–139, Records Disposition Schedule (converting to AFMAN 33–339, see § 806.9(b)). The functional OPR or FOIA office may keep the records released or denied. The FOIA office keeps the FOIA case file for each request. The FOIA case file consists of: the initial request; tasking to OPRs; OPR's reply; memoranda for record (MFR) of phone calls or other actions related to the FOIA request; DD Forms 2086, Record of Freedom of Information (FOI) Processing Cost, or 2086–1, Record of Freedom of Information (FOI) Processing Cost for Technical Data; final response; and any of the following, if applicable: extension letter; legal opinions; submitter notification letters and replies; the appeal and required attachments (except for the released or denied records if maintained by the OPR); and all other correspondence to and from the requester.

§ 806.11 FOIA reading rooms.

Each FOIA office will arrange for a reading room where the public may inspect releasable records. You do not need to co-locate the reading room with the FOIA office. The FOIA does not require creation of a reading room dedicated exclusively to this purpose. A "reading room" is any location where a requester may review records. For FOIA-processed (a)(3) records, if requesters meet the criteria for search and review costs, they must be paid before inspecting records. Assess reproduction costs at the time of inspection, if appropriate.

§ 806.12 Record availability.

(a) HQ AFCIC/ITC will make the traditional FOIA-processed (a)(2) materials (5 U.S.C. 552(a)(2)(A), (B), and (C)) available to the public. Each Air Force activity must make 5 U.S.C. 552(a)(2)(D) records ("FOIA-processed (a)(2)(D) records"—records which they determine will, or have become, the subject of frequent or subsequent requests) available to the public in a reading room in hard copy and electronically by posting it to their appropriate web site. There is no requirement to make all FOIA-released records available electronically. The FOIA manager, in coordination with the functional OPR, or the owner of the records, determines qualifying records, after coordination with any interested OCRs. As required by AFIs 33–129 and 35–205, OPRs request clearance of these records with the PAO before posting on the WWW.

(b) Normally, if the FOIA office or OPR receives, or anticipates receiving, five or more requests for the same record in a quarter, they will consider it a frequently requested record (FOIA-processed (a)(2)(D) record) and make it publicly available in hard copy and electronically as outlined in § 806.12(a). OPRs may elect to make other records publicly available if they receive, or expect to receive, less than five requests a quarter. The purpose is to make records available in an ERR to potential future FOIA requesters instead of waiting to receive a FOIA request, and reduce the number of multiple FOIA requests for the same records requiring separate responses. In making these determinations, recognize there are some situations in which a certain type of record becomes the subject of simultaneous FOIA requests from all interested parties and then ceases to be of interest. Activities may typically receive a "flurry" of FOIA requests for contract records immediately after a contract is awarded, but do not receive any subsequent requests for such bulky records after that point. In some cases, activities may decide that placing records in the ERR would not serve the statutory purpose of "diverting some potential FOIA requests for previously released records." The following types of records should be considered for inclusion in the ERR (excluding individuals assigned to overseas, sensitive, and routinely deployable units): organizational charts and limited staff directories; lists of personnel reassigned with gaining base; MAJCOM FOIA supplements; lists of International Merchant Purchase Authority Card (IMPAC) card holders. Do not post lists of e-mail addresses.

(c) GILS. Each activity that posts FOIA-processed (a)(2)(D) records (records which they determine will, or

have become, the subject of frequent or subsequent requests) must create a GILS record for each FOIA-processed (a)(2)(D) record and post it to DefenseLINK. The OPR prepares the GILS record. You can complete and submit a GILS record on-line using a web browser. Instructions for completing the GILS record, and an on-line form are at *http://www.defenselink.mil/locator/index.html*. Follow the steps listed on the web page. The GILS site on DefenseLINK will serve as the central index of Air Force FOIA-processed (a)(2)(D) records.

(d) In addition, installations will post a list, or index, of locally produced FOIA-processed (a)(2)(D) records on their web page at their FOIA site. Each listing will point or link to the particular record. In addition, MAJCOMs may choose to post their own index of MAJCOM specific FOIA-processed (a)(2)(D) records to their appropriate web site. Installation web pages will include the following phrase (or similar words) on their FOIA site if they do not have any frequently requested FOIA records: "There are no frequently requested FOIA records to post at this time." Include the following statement, or a similar one, on the installation web page with the records: "Some records are released to the public under the FOIA, and may therefore reflect deletion of some information in accordance with the FOIA's nine statutory exemptions. A consolidated list of such records is on DefenseLINK." Link the word "DefenseLINK" to *www.defenselink.mil/locator/fpr_index.html*. Qualifying releasable records with exempt information redacted must show on the record the amount of information withheld and the exemption reason (for example, (b)(6)). Activities with such records should provide the public an index and explanation of the FOIA exemptions. All installation FOIA pages will include a link to the Air Force page.

(e) FOIA web pages should be clearly accessed from the main installation page, either by a direct link to "FOIA" or "Freedom of Information Act" from the main page, or found under a logical heading such as "Library" or "Sites."

§ 806.13 5 U.S.C. 552(a)(2) materials.

The GILS records on DefenseLINK will serve as the index for 5 U.S.C. 552(a)(2)(D) materials.

§ 806.14 Other materials.

HQ AFCIC/ITC makes the appropriate FOIA-processed (a)(1) materials available for the Air Force.

§ 806.15 FOIA exemptions.

(a) *Exemption number 1.* When a requester seeks records that are classified, or should be classified, only an initial classification authority, or a declassification authority, can make final determinations with respect to classification issues. The fact that a record is marked with a security classification is not enough to support withholding the document; make sure it is "properly and currently classified." Review the record paragraph by paragraph for releasable information. Review declassified and unclassified parts before release to see if they are exempt by other exemptions. Before releasing a reviewed and declassified document, draw a single black line through all the classification markings so they are still legible and stamp the document unclassified. If the requested records are "properly and currently classified," and the Air Force withholds from release under FOIA exemption (b)(1), and the requester appeals the withholding, include a written statement from an initial classification authority or declassification authority certifying the data was properly classified originally and that it remains properly classified per Executive Order. Examples of initial classification and declassification authority statements are included in § 806.27. Guidance on document declassification reviews is in AFI 31–401, Managing the Information Security Program, and DoD 5200.1–R, Information Security Program, January 1997.

(b) *Exemption number 3.* HQ AFCIC/ITC will provide the current FOIA-processed (b)(3) statutes list to the MAJCOMs.

(c) *Exemption number 4.* The Air Force, in compliance with Executive Order 12600, will advise submitters of contractor-submitted records when a FOIA requester seeks the release of such records, regardless of any initial

determination of whether FOIA exemption (b)(4) applies. (See § 806.20(a) and § 806.31). Due to a change to Title 48 CFR, Federal Acquisition Regulations System, submitter notification is not required prior to release of unit prices contained in contracts awarded based upon solicitations issued after January 1. 1998. For solicitations issued before January 1, 1998, conduct a normal submitter notice. Unit prices contained in proposals provided prior to contract award are protected from release, as are all portions of unsuccessful proposals (before and after contract award) (10 U.S.C. 2305(g), Prohibition on Release of Contractor Proposals).

(d) *Exemption number 5.* (1) Attorney-client records could include, e.g., when a commander expresses concerns in confidence to his or her judge advocate and asks for a legal opinion. The legal opinion and everything the commander tells the judge advocate in confidence qualify under this privilege. Unlike deliberative process privilege, both facts and opinions qualify under the attorney work product or attorney-client privilege. Attorney work product records are records an attorney prepares, or supervises the preparation of, in contemplating or preparing for administrative proceedings or litigation.

(2) Based on court decisions in FOIA litigation, which led to the release of results of personnel surveys, FOIA managers and IDAs should get advice from an Air Force attorney before withholding survey results under FOIA exemption (b)(5).

(e) *Exemption number 6.* (1) AFI 37–132, Air Force Privacy Act Program (will convert to AFI 33–332) provides guidance on collecting and safeguarding social security numbers (SSN). It states: "SSNs are personal and unique to each individual. Protect them as FOUO. Do not disclose them to anyone without an official need to know." Before releasing an Air Force record to a FOIA requester, delete SSNs that belong to anyone other than the requester. In any subsequent FOIA release to a different requester of those same records, make sure SSNs are deleted. When feasible, notify Air Force employees when someone submits a FOIA request for information about them. The notification letter should include a brief description of the records requested. Also include a statement that only releasable records will be provided and we will protect personal information as required by the FOIA and Privacy laws.

(2) Personal information may not be posted at publicly accessible DoD web sites unless to do so is clearly authorized by law and implementing regulation and policy. Personal information should not be posted at nonpublicly accessible web sites unless it is mission essential and appropriate safeguards have been established. See also AFIs 33–129 and 35–205.

(3) Withhold names and duty addresses of personnel serving overseas or in sensitive or routinely deployable units. Routinely deployable units normally leave their permanent home stations on a periodic or rotating basis for peacetime operations or for scheduled training exercises conducted outside the United States or United States territories. Units based in the United States for a long time, such as those in extensive training or maintenance activities, do not qualify during that period. Units designated for deployment on contingency plans not yet executed and units that seldom leave the United States or United States territories (*e.g.*, annually or semiannually) are not routinely deployable units. However, units alerted for deployment outside the United States or United States territories during actual execution of a contingency plan or in support of a crisis operation qualify. The way the Air Force deploys units makes it difficult to determine when a unit that has part of its personnel deployed becomes eligible for denial. The Air Force may consider a unit deployed on a routine basis or deployed fully overseas when 30 percent of its personnel have been either alerted or actually deployed. In this context, alerted means that a unit has received an official written warning of an impending operational mission outside the United States or United States territories. Sensitive units are those involved in special activities or classified missions, including, for example, intelligence-gathering units that collect, handle, dispose of, or store classified information and materials, as well as units that train or advise foreign personnel.

(i) Each MAJCOM and FOA will establish a system and assign OPRs to identify United States-based units in their command qualifying for the "sensitive or routinely deployable unit" designation, under this exemption. Appropriate OPRs could include directors of operations, plans and programs, and personnel.

(ii) MAJCOM FOIA managers will ensure the list of sensitive and routinely deployable units is reviewed in January and July, and will follow that review with a memo to the Air Force Personnel Center (HQ AFPC/MSIMD), 550 C Street West, Suite 48, Randolph AFB, TX 78150–4750, either validating the current list or providing a revised listing based on the current status of deployed units at that time. This listing is in American Standard Code for Information Interchange (ASCII) format on a 3½" (double-sided, high-density) diskette, which contains the unit's eight-position personnel accounting symbol (PAS) code, with one PAS code per line (record) (8-byte record). The MAJCOM FOIA manager will send an electronic copy of the list of nonreleasable units to HQ AFPC/MSIMD which is included in the personnel data system. The MAJCOM and HQ AFPC FOIA offices will use it to determine releasable lists of names and duty addresses. This reporting requirement is exempt from licensing with a reports control symbol (RCS) in accordance with AFI 37–124, The Information Collections and Reports Management Program; Controlling Internal, Public, and Interagency Air Force Information Collections (will convert to AFI 33–324).

(f) *Exemption number 7.* Guidance provided in § 806.15(e)(1) also applies to SSNs in records compiled for law enforcement purposes. Do not disclose SSNs to anyone without an official need to know.

§ 806.16 For official use only.

(a) Markings. Record owners may also add the following sentence to the statement above: "(Further distribution is prohibited without the approval of (owner's organization, office symbol, phone).)"

(b) Dissemination and transmission. (1) When deciding whether to send FOUO records over facsimile equipment, balance the sensitivity of the records against the risk of disclosure. When faxing, use cover sheets to indicate FOUO attachments (*i.e.*, AF Form 3227, Privacy Act Cover Sheet, for Privacy Act information). Consider the location of sending and receiving machines and ensure authorized personnel are available to receive FOUO information as soon as it is transmitted.

(2) For Privacy Act records, refer to AFI 33–332 for specific disclosure rules. For releases to GAO and Congress, refer to AFI 90–401, Air Force Relations With Congress and AFI 65–401, Relations With the General Accounting Office. See § 806.9(b) for availability.

(c) Termination, disposal and unauthorized disclosures. You may recycle FOUO material. Safeguard the FOUO documents or information to prevent unauthorized disclosure until recycling. Recycling contracts must include specific responsibilities and requirements on protecting and destroying FOUO and Privacy Act materials.

§ 806.17 Release and processing procedures.

(a) Individuals seeking Air Force information should address requests to an address listed in § 806.26. MAJCOM FOIA office phone numbers and mailing addresses are available on the Air Force FOIA Web Page at *http://www.foia.af.mil*.

(1) A list of Air Force FOIA processing steps, from receipt of the request through the final disposition of an administrative appeal is at § 806.29, which also includes guidance on preparing and processing an Air Force FOIA appeal package.

(2) Air Force host tenant relationships. The Air Force host base FOIA manager may log, process, and report FOIA requests for Air Force tenant units. In such cases, the host base FOIA office refers all recommended denials and "no records" appeals to the Air Force tenant MAJCOM FOIA manager. This does not apply to the Air National Guard (ANG), Air Force Reserves, or to disclosure authorities for specialized records.

(b) Use FOIA procedures in this part to process any congressional request citing FOIA, or covering a constituent

letter citing FOIA. This does not apply to requests from a Congressional Committee or Subcommittee Chair on behalf of the committee or subcommittee.

§ 806.18 Initial determinations.

(a) Disclosure authorities make final decisions on providing releasable records within the time limits and provide recommendations to the IDA on proposed denials and partial denials after coordination with the appropriate FOIA and JA office. Normally, disclosure authorities are division chiefs or higher at Air Staff level. MAJCOMs will designate their disclosure authority levels. The level should be high enough so a responsible authority makes the disclosure according to the policies outlined in this part. At out sourced units or functions, the disclosure authority must be a government official. Contractors who are functional OPRs for official government records are not authorized to make the decision to disclose government records.

(b) On receipt, Air Force FOIA offices will promptly inform Air Force PAOs of all FOIA requests that are potentially newsworthy, or that are submitted by news media requesters. FOIA offices will coordinate final replies for such cases with public affairs.

§ 806.19 Reasonably segregable portions.

Delete information exempt from release under the FOIA from copies of otherwise releasable records. Do not release copies that would permit the requester to "read through the marking." Examples of records with deletions of exempted data are in § 806.30.

§ 806.20 Records of non-U.S. government source.

(a) The Air Force, in compliance with Executive Order 12600, will advise submitters of contractor-submitted records when a FOIA requester seeks the release of such records, regardless of any initial determination as to whether FOIA exemption (b)(4) applies. See § 806.15(c) and § 806.31. Due to a change to 48 CFR, submitter notification is not required prior to release of unit prices contained in contracts awarded based upon solicitations issued after January 1, 1998. For solicitations issued before January 1, 1998, conduct a normal submitter notice. Unit prices contained in proposals provided prior to contract award are protected from release, as are all portions of unsuccessful proposals (before and after contract award) (10 U.S.C. 2305(g)).

(b) Department of State involvement. Air Force FOIA managers will notify their MAJCOM (or equivalent) FOIA office, in writing, via fax or e-mail when the Department of State becomes involved in any Air Force FOIA actions. The MAJCOM FOIA office will provide 11 CS/SCSR, via fax or e-mail, a summary of the issues involved, and the name, phone number, mailing address and e-mail address of: their own FOIA office point of contact; the Air Force record OPR point of contact, the DoD component FOIA office point of contact (if any), and the Department of State point of contact. 11 CS/SCSR will inform SAF/IA of any State Department involvement in Air Force FOIA actions. (See § 806.7(b).) An example of a memo advising 11 CS/SCSR of State Department involvement in an Air Force FOIA action is provided in § 806.27.

§ 806.21 Appeals.

(a) FOIA requesters seeking Air Force records must address appeals to the Office of the Secretary of the Air Force, through the FOIA office of the IDA that denied the request. Requesters should attach a copy of the denial letter to their appeal and give reasons for appealing. Air Force IDAs may reconsider any prior denials and may grant all or part of a requester's appeal. When any appellate action sought by a FOIA requester is denied by an IDA, the IDA will include a statement that the issues raised in the appeal were considered and rejected (in full or in part) in any file sent to the Secretary of the Air Force in the course of a FOIA appeal action. Send all appeals to IDA decisions at the wing level through the MAJCOM FOIA office for sending to the Secretary of the Air Force's designated appellate authority, SAF/GCA (and Air Force Legal Services Agency (AFLSA/JACL)). (See

§§ 806.4(g), 806.5(b), and § 806.5(k).) Additional steps are required prior to sending an appeal file.

(1) MAJCOM FOIA offices and record OPRs are responsible for ensuring adequate preparation of the FOIA appeal package for reconsideration by the IDA. FOIA offices and records OPRs will coordinate with Air Force attorneys, who will provide written opinions on substantive issues raised in the appeal.

(2) If a requester appeals an Air Force "no records" determination, Air Force elements must search again or verify the adequacy of their first search. The package must include documents that show the Air Force element systematically tried to find responsive records. Tell, for example, what areas or offices were searched and how the search was conducted—manually, by computer, by telephone, and so forth. In the event a requester sues the Air Force to contest a determination that no responsive records exist, formal affidavits are required to support the adequacy of any searches conducted.

(3) FOIA requesters seeking to appeal denials involving Office of Personnel Management's controlled civilian personnel records must appeal to the Office of the General Counsel, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415.

(4) If a requester appeals a denial of a fee waiver, fee estimate, or fee reduction request, FOIA offices and record OPRs must account for actual and estimated costs of processing a request, and will include copies of the DD Forms 2086 or 2086–1 in the appeal package.

(5) When any appellate action sought by a FOIA requester is denied by an IDA, prepare the FOIA appeal package as specified in § 806.29, and then the MAJCOM FOIA office forwards the appeal file to the Secretary of the Air Force's designated appellate authority, SAF/GCA (through AFLSA/JACL), for a final administrative determination.

(b) Air Force activities will process appeal actions expeditiously to ensure they reach the Office of the Secretary of the Air Force in a timely manner.

§ 806.22 Time limits.

Any FOIA appeals received after the 60-day time limit are not processed, unless the requester provides adequate justification for failing to comply with the time limit. If a late appeal is received, and there is no adequate justification for failing to comply with the time limit, the FOIA office will advise the FOIA requester their appeal has been closed. An example of a closure letter is included in § 806.27.

§ 806.23 Delay in responding to an appeal.

For an appeal in process and not yet forwarded to AFLSA/JACL, the MAJCOM FOIA office is responsible for advising the requester of the status of the appeal. For an appeal in process at AFLSA/JACL, that office will advise the requester regarding status of the appeal.

§ 806.24 Fee restrictions.

For FOIA purposes, Air Force activities will consider the cost of collecting a fee to be $15 and will not assess requesters' fees for any amount less than $15.

§ 806.25 Annual report.

(a) MAJCOM FOIA managers and AFLSA/JACL send a consolidated report for the fiscal year on DD Form 2564, Annual Report Freedom of Information Act, to HQ AFCIC/ITC by October 30 via regular mail, e-mail, or facsimile. AFLSA/JACL will prepare the appeals and litigation costs sections of the report. HQ AFCIC/ITC will make the Air Force report available on the WWW.

(b) Total requests processed. "Processed" includes responses that give an estimated cost for providing the records, even if the requester has not paid.

(c) Denied in full. Do not report "no record" responses as denials.

(d) Other reasons.

(1) *Referrals*. Also include referrals within Air Force in this category.

(2) *Not an agency record*. The "not an agency record" other reason category only applies to requests for: objects or articles such as structures, furniture, vehicles and equipment, whatever their historical value, or value as evidence;

anything that is not a tangible or documentary record such as an individual's memory or oral communication; and personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee and not distributed to other agency employees for their official use. This category does not include "no record" responses.

(e) Other. The "Other (Specify)" block must contain the reason with the total number for the reason. For example: "FOIA request had no return address–4."

(f) 5 U.S.C. 552(b)(3) statutes invoked on initial determinations. A corresponding statute is required for each instance entered in the Exemption 3 block. List the statute by number, not title. For any statute on the report that is not on DoD's list of commonly used 5 U.S.C. 552(b)(3) statutes, attach a copy of the pertinent page of the statute that states information must be withheld from public disclosure. HQ AFCIC/ITC makes the DoD list available to FOIA managers electronically. Statutes on the DoD list with an asterisk indicate they are valid 5 U.S.C. 552(b)(3) statutes from litigation. Do not enter any of the following as 5 U.S.C. 552(b)(3) statutes:

5 U.S.C. 552
5 U.S.C. 552a
28 U.S.C. 1498
17 U.S.C. 101
18 U.S.C. 1905.

(g) Appeal determinations. Enter the total number of FOIA appeals received and total number of FOIA appeals completed during the fiscal year.

(h) Average. Air Force will use the "median age" and will not collect or report averages.

(i) Number of initial requests received during the fiscal year. This number includes open and closed cases.

(j) Total number of initial requests. "Processed" includes responses which give an estimated cost for providing the records, even if the requester has not paid.

(k) Total program cost. This figure includes all costs from the DD Forms 2086 and 2086–1, as well as personnel costs for individuals primarily involved in administering the FOIA program. To figure personnel costs, multiply the annual salary of each person by the percentage of time spent on FOIA.

(l) MAJCOMs and bases do not include the 25 percent. HQ AFCIC/ITC will add to the final Air Force report to DoD.

(m) Authentication. MAJCOM SCs will sign as approving official (or two-letter functional equivalent for FOIA offices in other functional areas).

§ 806.26 Addressing FOIA requests.

(a) FOIA requests concerning Air National Guard Inspector General records should be sent to 11 CS/SCSR (FOIA), 1000 Air Force Pentagon, Washington, DC 20330–1000.

(b) Addressing Air Force Freedom of Information Act requests. The Department of the Air Force, a component of the DoD, includes the Office of the Secretary of the Air Force, the Chief of Staff of the Air Force (who is supported by Headquarters Air Force or "Air Staff" elements), the MAJCOMs, the FOAs, and DRUs. This section lists the FOIA office addresses. A selected subordinate unit is also included in this section. Realignment of Air Force elements is frequent; addresses listed below are subject to change.

(c) The Department of the Air Force does not have a central repository for Air Force records. FOIA requests are addressed to the Air Force element that has custody of the record desired. In answering inquiries regarding FOIA requests, Air Force personnel will assist requesters in determining the correct Air Force element to address their requests. If there is uncertainty as to the ownership of the record desired, refer the requester to the Air Force element that is most likely to have the record. Two organizations that include Air Force elements, and hold some Air Force-related records, are also included in the addresses listed below.

(d) MAJCOMs:

(1) Air Combat Command (ACC): HQ ACC/SCTC, 230 East Flight Line Road, Langley AFB VA 23665–2781.

(2) Air Education and Training Command (AETC): HQ AETC/SCTS, 61 Main Circle Suite 2, Randolph AFB TX 78150–4545.

(3) Air Force Materiel Command (AFMC): HQ AFMC/SCDP, 4225 Logistics Avenue, Suite 6, Wright-Patterson AFB, OH 45433–5745.

(4) Air Force Reserve Command (AFRC): HQ AFRC/SCSM, 155 2nd Street, Robins AFB, GA 31098–1635.

(5) Air Force Special Operations Command (AFSOC): HQ AFSOC/SCMN, 100 Bartley Street, Suite 201, Hurlburt Field, FL 32544–5273.

(6) Air Force Space Command (AFSPC): HQ AFSPC/SCMA, 150 Vandenberg Street, Suite 1105, Peterson AFB, CO 80914–4400.

(7) Air Mobility Command (AMC): HQ AMC/SCYNR, 203 West Losey Street, Room 3180, Scott AFB, IL 62225–5223.

(8) Pacific Air Forces (PACAF): HQ PACAF/SCT, 25 E Street, Suite C220, Hickam AFB, HI 96853–5409.

(9) United States Air Forces in Europe (USAFE): HQ USAFE/SCMI, Unit 3050, Box 125, APO AE 09094–0125.

(e) FOAs:

(1) Air Force Audit Agency (AFAA): HQ AFAA/IMP, 1126 Air Force Pentagon, Washington, DC 20330–1126.

(2) Air Force Base Conversion Agency (AFBCA): AFBCA/ESA, 1700 North Moore Street, Suite 2300, Arlington, VA 22209–2802.

(3) Air Force Center for Environmental Excellence (AFCEE): HQ AFCEE/MSI, 3207 North Road, Brooks AFB, TX 78235–5363.

(4) Air Force Civil Engineering Support Agency (AFCESA): HQ AFCESA/IMD, 139 Barnes Drive Suite 1, Tyndall AFB, FL 32403–5319.

(5) Air Force Historical Research Agency (AFHRA): AFHRA/RSA, 600 Chennault Circle, Maxwell AFB, AL 36112–6424.

(6) Air Force Inspection Agency (AFIA): (Shared FOIA office/function, AFIA and Air Force Safety Agency) AFSA/JAR, 9700 Avenue G SE, Suite 236B, Kirtland AFB, NM 87117–5670.

(7) Air Force Medical Support Agency (AFMSA): AFMSA/CCEA, 2510 Kennedy Circle, Suite 208, Brooks AFB, TX 78235–5121.

(8) Air Force News Agency (AFNEWS): HQ AFNEWS/SCB, 203 Norton Street, Kelly AFB, TX 78241–6105.

(9) Air Force Office of Special Investigations (AFOSI): HQ AFOSI/SCR, P. O. Box 2218, Waldorf, MD 20604–2218.

(10) Air Force Personnel Center (AFPC): HQ AFPC/MSIMD, 550 C Street West, Suite 48, Randolph AFB, TX 78150–4750.

(11) Air Force Center for Quality and Innovation (AFCQMI): AFCQMI/CSP, 550 E Street East, Randolph AFB, TX 78150–4451.

(12) Air Force Safety Agency (AFSA): (Shared FOIA office/function, AFIA, and AFSA) AFSA/JARF, 9700 Avenue G SE, Suite 236B, Kirtland AFB, NM 87117–5670.

(13) Air Force Security Forces Center (AFSFC): AFSFC/CCQ 1720 Patrick Street, Lackland AFB, TX 78236–5226.

(14) Air Force Services Agency (AFSVA): AFSVA/SVSR, 9504 1H–35 North, Suite 250, San Antonio, TX 78233–6635.

(15) Air Force Technical Applications Center (AFTAC): AFTAC/LSCS, 1030 South Highway, Suite A1A, Patrick AFB, FL 32925–6001.

(16) Air Intelligence Agency (AIA): AIA/DOOI, 102 Hall Boulevard, Suite 229, San Antonio, TX 78243–7029.

(17) Air Reserve Personnel Center (ARPC): ARPC/SCS, 6760 East Irvington Place, #6600, Denver, CO 80280–6600.

(18) Air Force Weather Agency (AFWA): HQ AFWA/SCI, 106 Peacekeeper Drive Suite 2N3, Offutt AFB, NE 68113–4039.

(19) Air Force History Support Office (AFHSO): AFHSO, 500 Duncan Avenue Box 94, Bolling AFB, DC 20332–1111.

(f) DRUs:

(1) Air Force Operational Test and Evaluation Center (AFOTEC): AFOTEC/SCM, 8500 Gibson Boulevard SE, Kirtland AFB, NM 87117–5558.

(2) 11th Wing: 11 CS/SCSR (FOIA), 1000 Air Force Pentagon, Washington, DC 20330–1000 (if a person is unsure where to send a FOIA request for Air Force records, or is seeking records from the Office of the Secretary of the Air Force, or other Headquarters Air Force records, use this address).

(3) United States Air Force Academy (USAFA): 10 CS/SCBD, 2304 Cadet Drive, Suite 232, USAFA, CO 80840–5060.

(g) Selected subordinate units: Air Force Communications Agency (AFCA): HQ AFCA/CCQI, 203 West Losey Street, Room 1022, Scott AFB, IL 62225–5203.

(h) Organizations which include air force elements:

(1) Army and Air Force Exchange Service (AAFES): HQ AAFES/GC-E, P.O. Box 660202, Dallas, TX 75266–0202.

(2) National Guard Bureau (NGB)/Air National Guard: NGB-AD, 2500 Army Pentagon, Washington, DC 20310–2500. (FOIA requests concerning Air National Guard IG records should be sent to 11 CS/SCSR (FOIA), 1000 Air Force Pentagon, Washington, DC 20330–1000)

§ 806.27 Samples of Air Force FOIA processing documents.

(a) This section includes suggested language in paragraph format that tracks Air Force and DoD FOIA guidance. The rest of the body of letters and memorandums should comply with Air Force administrative guidance. Each MAJCOM may elect to prepare their own verbiage to meet their specific needs, so long as FOIA processing actions are consistent with guidance in DoD 5400.7–R and this part. In this section, language in parentheses is for explanatory purposes only. Do not include any of the parenthetical language of this section in your FOIA correspondence. When optional language must be selected, the optional language will be presented within parentheses. Use only the portions that apply to the specific request or response.

(b) Initial receipt of Freedom of Information Act request.

We received your Freedom of Information Act (FOIA) request dated ## Month year, for (summarize the request) on ## Month year (date received). We will provide you our release determination by (enter date that is 20 workdays from date you received the request). (Based on our initial review, we believe we cannot process your request within 20 workdays.) (If "cannot" is used, add appropriate explanation; examples follow.) Please contact (name and commercial telephone number) if you have any questions and refer to case number #######.

(c) Interim response:

Your request will be delayed because: all or part of the responsive records are not located at this installation; (and/or) Processing this FOIA request will require us to collect and review a substantial number of records (and/or) Other Air Force activities or other agencies (if applicable) to include the submitter of the information, need to be involved in deciding whether or not to release the responsive records. We expect to reply to your request not later than (give a date that is not more than 30 workdays from the initial receipt of the request); (or) If processing the FOIA request will take more than the allowed time limits to respond). We find we are unable to meet the time limits imposed by the FOIA in this instance because (tell the requester the reason for the delay) (example: the records are classified and must be reviewed for possible declassification by other activities or agencies). We anticipate completing your request by (date).

(When charging fees is appropriate.) The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. Based on the information in your request, we have determined your fee category is (commercial/educational or noncommercial scientific institution or news media/all others). As a result, you (if commercial category) are required to pay all document search, review and duplication costs over $15.00. (or) As a result, you (if educational or noncommercial scientific institution or news media) will be provided the first 100 pages free of charge; you are required to pay any duplication costs over and above those amounts. (or) As a result, you will be provided the first 2 hours of search time and the first 100 pages free of charge; you are required to pay any search and duplication costs over and above those amounts.

(d) Request for a more specific description:

Your request does not sufficiently describe the desired records. The FOIA applies to existing Air Force records; without more specific information from you, we cannot identify what documents might be responsive to your request. Please give us whatever additional details you may have on the Air Force records you want. Can you tell us when the records were created, and what Air Force element may have created the records? If this request involves an Air Force contract, do you know the contract number and dates it covered? Our address is (include name and complete mailing address), our fax number is (give fax number), our e-mail address is (optional—give complete e-mail address). Based on the original request you sent us, we are unable to respond.

(e) Single letter acknowledging receipt of request and giving final response. (If you can complete a FOIA request within the statutory 20-workday processing period, Air Force elements may elect to send a single letter to the requester, along with responsive records which are released to the requester in full).

We received your Freedom of Information Act (FOIA) request dated ## Month year, for (summarize the request) on ## Month year (date received). A copy (or) Copies of (describe the record(s) being released) (is/are) releasable and (is/are) attached.

(f) Collection of fees:

The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. We have placed you in the (enter the fee category) fee category. In your case, we have assessed a charge of $____ for processing your request. The fee was calculated in the following manner: (Give a detailed cost breakdown: for example, 15 pages of reproduction at $0.15 per page; 5 minutes of computer search time at $43.50 per minute, 2 hours of professional level search at $25 per hour.) Please make your check payable to (appropriate payee) and send it to (give your complete mailing address) by (date 30 days after the letter is signed). (or) The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. We have placed you in the (enter the fee category); however, in this case, we have waived collecting fees.

(g) Multitrack processing letters to FOIA requesters. (When using the multitrack FOIA processing system, determine which of the following paragraphs to include in your letters to the requester. To the extent it may apply, include language from paragraph 2 of the sample. If a requester asks for expedited processing, answer carefully if you decide not to provide expedited processing, because requesters may appeal denial of their request for expedited processing. Advise requesters placed into the complex track in writing how they can simplify their request to qualify for the simple track.)

We received your Freedom of Information Act (FOIA) request dated ## Month year, for (summarize the request) on ## Month year (date received). Because our organization has a significant number of pending FOIA requests, which prevents us from making a response determination within 20 workdays, we have instituted multitrack processing of requests. Based on the information you provided, we have placed your request in the (simple or complex) track. We have assigned number ##### to identify your request; should you need to contact us about your request, please write or call (name and telephone) and use this number to assist us in responding more promptly.

Based on our current backlog, we expect to respond to your request not later than (give an estimated date). Our policy is to process requests within their respective tracks in the order in which we receive them. We do process each FOIA request as quickly as we can.

(h) If the request is placed in the complex track:

In your case, processing your request is complex because (give basic reasons this is a complex case: request was vague or complicated; the records sought are voluminous; multiple organizations will have to work on this request; records are classified; responsive records came from another command/another service/a nongovernment source; responsive records were part of the Air Force's decision-making process, and the prerelease review will require policy determinations from different Air Force elements; records describe law enforcement activities; records involve foreign policy issues; due to the nature of your request and/or the nature of our computer system, responding to your request or providing a response in the electronic format you requested will be technically complex, etc.). Simplifying your request might permit quicker processing in the following ways: (describe ways the search could be narrowed to fewer records, or ways policy issues could be avoided, etc.) Can you tell us when the records were created, and what Air Force element may have created the records? If this request involves an Air Force contract, do you know the contract number? Please give us whatever additional details you may have on the Air Force records you are seeking, so we can attempt to streamline the processing of your request. Our address is (give complete mailing address), our fax number is (give fax number), our e-mail address is (optional—give complete e-mail address).

(i) If the requester asks that you expedite their request:

Because individuals receiving expedited processing may receive a response before other earlier requesters, there are administrative requirements you must meet before we can expedite a request. In your request, you asked that we expedite processing. In order for us to expedite a request, the requester must provide a statement certifying the reasons supporting their request are true and correct to the best of their knowledge.

In the second category, "urgently needed" means the information itself has a particular value that it will lose if it is not disseminated quickly. Ordinarily this means the information concerns a breaking news story of general public interest. Historic information, or information sought for litigation or commercial activities usually would not

qualify for expedited processing in the second category. Also, the fact that a news organization has an internal broadcast or publication deadline, so long as the deadline was unrelated to the nature of the information itself (for example, the information was not a breaking news story of general public interest) would not make the information "urgently needed."

In this case, we have determined your FOIA request (will/will not) receive expedited processing. We came to this conclusion because you (did/did not) demonstrate you need the information because failure to obtain the records on an expedited basis (could or could not) reasonably expect to pose an imminent threat to life or physical safety of an individual (or) the information (is or is not) urgently needed in order to inform the public about actual or alleged Federal Government activity (or) failure to obtain the records on an expedited basis (could or could not) reasonably expect to lead to an imminent loss of substantial due process rights, (or) release (would or would not) serve a humanitarian need by promoting the welfare and interests of mankind (and/or) your request for expedited processing did not meet the statutory requirements of the FOIA; you did not provide enough information to make a determination of compelling need for the information you requested (and/or) you did not properly certify your request.

(j) If you deny a request for expedited processing:

If you consider our decision not to expedite your request incorrect, you may appeal our decision. Include in your appeal letter the reasons for reconsidering your request for expedited processing, and attach a copy of this letter. Address your appeal to Secretary of the Air Force through (address of MAJCOM FOIA office). In the meantime, we will continue to process your request in the (simple/complex) processing track.

(k) Certification, computer systems manager (electronic records or format requested).

(When answering a request for electronic records, based on the configuration of your hardware and/or software, certain factors may make a particular request complex. Have your computer system manager advise you whether or not they can create the new record/format on a "business as usual" basis. If producing the record/format would entail a significant expenditure of resources in time and manpower that would cause significant interference with the operation of the information system and adversely affect mission accomplishment, you do not need to process the request. The FOIA office needs to get a certification from the computer systems manager to document this determination to support their response. Possible language for this certification is provided below.)

I, (rank/grade and name) am the computer systems manager for (organization with electronic records responsive to FOIA request). In consultation with (FOIA office), I have considered the FOIA request of (requester's name), our ##### (FOIA identifier), which asked for (describe electronic record or format). We (do/do not) have electronic records that are responsive to this request (or) data that we (can/cannot) configure into the requested format. (If there are electronic records) The existing electronic records (do/do not) contain nonreleasable data that we (can/cannot) remove from the electronic record. Because of the way our (computer system/database/software) (use all that apply, specify hardware and/or software nomenclature if possible; for example, IBM ###, Microsoft Excel) is configured, creating the electronic record (or) modifying the existing record/format would entail a significant expenditure of resources in time and manpower that would cause significant interference with the operation of the information system and adversely affect mission accomplishment (describe how responding would interfere and time/manpower resources required, give estimated reprogramming time, if possible). I have applied the DoD "standard of reasonableness" in considering this request. I understand that when the capability exists to respond to a FOIA request that would require only a "business as usual" approach to electronically extract the data and compile an electronic record or reformat data to satisfy a FOIA request, then creation of the electronic record or reformatting the data would be appropriate. In this case, a significant expenditure of resources and manpower would be required to compile the electronic record (or) reformat existing data. This activity would cause a significant interference with the operation of our automated information system. I certify creation of the electronic record (or) reformatting existing data in order to respond to this request would not be reasonable, under the circumstances.

Signature

(Date Signed) (Signature Block)

(NOTE: Some electronic data requests may include a request for software. You may have to release government-developed software that is not otherwise exempt, if requested under the FOIA. Exemptions 1—classified software, 2—testing, evaluation, or similar software, 3—exempt by statute, 5—deliberative process/privileged software, and 7—law enforcement operations software may apply, based on the nature of the requested software. If the software is commercial off-the-shelf software, as opposed to software developed by the government, the software may

qualify to be withheld from release under FOIA exemption 4.

(l) "No (paper or electronic) records" or "requested format not available" letters.

This is in response to your Freedom of Information Act (FOIA) request dated ## Month year, for (summarize the request) on ## Month year (date received), our number #####.

A thorough search by (identify the unit(s) that tried to locate responsive records) did not locate any records responsive to your request. (If the requester asked questions, and there are no responsive records that would provide the answers to those questions): The FOIA applies to existing Air Force records; the Air Force need not create a record in order to respond to a request.

(or) A thorough assessment by the OPR and the computer systems manager has determined we cannot provide the (electronic record data) in the format you requested. (If this can be done on a "business as usual basis):" (Paper copies American Standard Code for Information Interchange (ASCII) files) of the data you requested are attached.

If you interpret this "o records" response as an adverse action, you may appeal it in writing to the Secretary of the Air Force. Your appeal should be postmarked no later than 60 calendar days from the date of this letter. Address your letter as follows: Secretary of the Air Force, Thru: (MAJCOM FOIA Office), (mailing address).

The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. We have placed you in the (enter category) fee category; however, in this case, we have waived fees. (If paper copies or ASCII files are provided:) The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. In your case, as a requester in the fee category of (add appropriate category), we have assessed a charge of $____ for processing your request. The fee was calculated in the following manner: (Give a detailed cost breakdown: for example, 15 pages of reproduction at $0.15 per page; 5 minutes of computer search time at $43.50 per minute, 2 hours of professional level search at $25 per hour.) Please make your check payable to (appropriate payee) and send it to (give your complete mailing address) by (date 30 days after the letter is signed).

(m) Referral or coordination letters. (These letters are to tell the requester all or part of the request was referred to another Air Force organization, to refer or coordinate the request to another federal government organization, and to advise a nongovernment submitter a FOIA request was received for information they submitted.)G56

(1) Letter to requester.

(If all or part of a request has been referred, write to the requester:) Your Freedom of Information Act (FOIA) request dated ## Month year, for (summarize the request) received on ## Month year (date received), our number #####, was referred (or) must be coordinated with (give mailing address of the FOIA office to which you are referring all or part of the request, the identity of the federal government organization you are either coordinating with or are referring all or part of the request to, or that you must coordinate with the nongovernment submitter of responsive information). (On referrals:) That office will process (all/part) of your request (describe which part is being referred if the entire request is not being referred) and they will respond directly to you. (On coordinations:) That organization has a significant interest in the records (or) created the records that may answer to your request. (Before notifying a requester of a referral to another DoD component or federal agency, consult with them to determine if their association with the material is exempt. If so, protect the association and any exempt information without revealing the identity of the protected activity.) (When a nongovernment submitter is involved:) The nongovernment submitter of information that may answer your request needs time to respond to the possible release of information under the FOIA.

Because we must refer (or) coordinate your request outside our organization, your request will be delayed. We will determine whether any records are available; as soon as is practicable, a decision will be made whether to release or to withhold from disclosure any responsive records under the FOIA, 5 U.S.C. 552. Your request will be processed as expeditiously as circumstances permit.

(2) Letter to another government agency.

(If all or part of a request was referred or requires coordination, write to the government entity): On ## Month year (date received), our organization received a Freedom of Information Act (FOIA) request from (identity of requester), Attachment 1, dated ## Month year, for (summarize the request). Based on our assessment of that request, our number #####, we need to (refer/coordinate) (all/part) of that request to you (describe which part is being referred or coordinated, if it was not the entire request). (Name and phone number of person who agreed to the referral or coordination) accepted this referral (or) coordination action was on (date).

We notified the requester of this action (see § 806.31).

We (do/do not) hold records responsive to this request. (If do hold is used:) Copies of responsive records located in our files are included at Attachment 3 to assist you in making your assessment on the releasability of (our/your) related records. If you need to contact us, our phone number and address is (give name, phone and complete mailing address), our fax number is (give fax number), our e-mail address is (give complete e-mail address).

(3) Letter to submitter of contract-related information.

(If contractor-submitted information is involved, write to the submitter:) On ## Month year (date received), our organization received a Freedom of Information Act (FOIA) request from (identity of requester), our number #####, dated ## Month year, for (summarize the request). Information you submitted to the Air Force was identified as responsive to this request, see copies attached.

To determine the releasability of the information contained in these documents and to give you the maximum protection under the law, please review the attached documents and give us the information outlined in § 806.31. If you feel the information is privileged or confidential, consists of proprietary commercial or financial information, and otherwise meets the statutory requirements for withholding the information from release under FOIA exemption 4, 5 U.S.C. 552(b)(4), respond to us in writing not later than ## working days from the date of this letter (usually 30 calendar days). If you object to release of this information under the FOIA, identify the items, lines, columns or portions you believe we should withhold from release.

You will also need to provide a written explanation of how release would adversely impact or cause harm to your competitive position, your commercial standing, or other legally protected interests. An assertion that "we should deny because all of the information was submitted in confidence" or "deny because all of the information was marked as proprietary in nature" would not justify withholding of the requested information under the FOIA. If you need to contact us, call or write (give name), phone number is (give commercial number), our address is (give complete mailing address), our fax number is (give fax number), our e-mail address is (give complete e-mail address).

(4) Letter requesting State Department coordination. (If the State Department is involved in coordinating on a request, fax or e-mail 11 CS/SCSR so they can inform SAF/IA if appropriate).

On ## Month year (date received), our organization received a Freedom of Information Act (FOIA) request from (identity of requester), our number #####, dated ## Month year, for (summarize the request). Because of the nature of this request, we were advised by (note the individual and organization who told you to coordinate the request with the State Department; this may be a MAJCOM or Combatant Command—give telephone and facsimile numbers if known) we need to coordinate this request with the Department of State. In accordance with DoD 5400.7–R, Air Force Supplement, we are informing you of their involvement in this FOIA request. (Provide any specifics available.) Air Force records are involved in this action. If you need to contact us, our phone number is (give commercial and DSN numbers), our address is (give complete mailing address), our fax number is (give fax number), our e-mail address is (give complete e-mail address).

(n) Certification of initial classification or declassification authority (When denying a FOIA request, in whole or in part, because the information requested is classified, the initial classification authority, his or her successor, or a declassification authority, needs to determine if the records are "properly and currently classified," and therefore must be withheld from release under FOIA exemption (b)(1); also, you need to determine that you cannot release any reasonably segregable additional portions. Language that certifies such a determination was made on a FOIA request involving classified records follows).

(1) Sample certification format—all information remains classified.

I, (rank/grade and name) am the initial classification authority (or) the successor to the original initial classification authority (or) the declassification authority for (give an unclassified description of the records concerned). In consultation with (FOIA office), I have assessed the FOIA request of (requester's name), our ##### (FOIA identifier), for records that were properly classified at the time of their creation and currently remain properly classified in accordance with Executive Order (E.O.) 12958, National Security Information, (or) contain information that we have determined is classified in accordance with E.O. 12958 Section 1.5(__) (or) in accordance with E.O. 12958 Section 1.5(__) and is also exempt from declassification in accordance with Section 1.6(__) of the E. O. (or if the record is more than 25 years old) contain information that we have determined is exempt from declassification in accordance with E.O. 12958 Section

3.4(b)(__). Unauthorized release could cause (for TOP SECRET, use exceptionally grave; for SECRET use serious; for CONFIDENTIAL do not add language; should read cause damage) damage to national security. There are no reasonably segregable portions that we can release. Consequently release of this information is denied pursuant to 5 U.S.C. 552(b)(1).

Signature

(Date Signed) (Signature Block)

(2) Sample certification format—portions remain classified.

I, (rank/grade and name) am the initial classification authority (or) the successor to the original initial classification authority (or) the declassification authority for (give an unclassified description of the records concerned.) In consultation with (FOIA office), I have assessed the FOIA request of (requester's name), our ##### (FOIA identifier), that asked for records, (or) portions of which were properly classified at the time of their creation. Portions of the records currently remain properly classified in accordance with E.O. 12958. The bracketed information is currently and properly classified in accordance with Section 1.5 (add appropriate subparagraph), E.O. 12958, and is also exempt from declassification in accordance with Section 1.6(__) of the Executive Order (or if the record is more than 25 years old) contain information that we have determined is exempt from declassification in accordance with E.O. 12958 Section 3.4(b)(__). Unauthorized release could cause (for TOP SECRET use exceptionally grave; for SECRET use serious; for CONFIDENTIAL do not add language; should read cause damage) damage to national security. There are no other reasonably segregable portions that we can release. Consequently this information is denied pursuant to 5 U.S.C. 552(b)(1).

Signature

(Date Signed) (Signature Block)

(o) Letter to a requester who has withdrawn their request or appeal. (If a FOIA requester has withdrawn a FOIA request or appeal, sending a final letter to the requester to close the file may be wise. Suggested language to the requester follows):

We received your Freedom of Information Act (FOIA) request (or) appeal dated ## Month year, on ## Month year (date received). After sending us your request (or) appeal, you indicated by (facsimile, letter) that you wished to withdraw your request (or) appeal. We have, therefore, closed your file without further action.

(p) Letter to a requester who has appealed after the 60-day deadline. (We will not process FOIA appeals received after the 60-day time limit, unless the requester provides adequate justification for failing to comply. If you receive a late appeal, and it gives inadequate justification for failing to comply, the FOIA office will advise the requester their appeal was closed; suggested language for a letter to an untimely requester follows.)

We received your Freedom of Information Act (FOIA) appeal dated ## Month year, on ## Month year (date received). You did not appeal within 60 days of the postmarked date of our denial letter as outlined in our agency regulation. Therefore, we are closing our file.

(q) Letter to a requester who has appealed. (There are occasions when, on reconsideration, an IDA grants all or part of an appeal. When sending their appeal to higher headquarters, notify the requester. Suggested language to a requester who has appealed follows):

We received your Freedom of Information Act (FOIA) appeal, our number #####, dated ## Month year, on ## Month year (date received). We considered the issues raised in your appeal carefully. We have decided to grant (or) partially grant your appeal.

(If you grant all or part of the appeal): Upon reconsideration, we are releasing the requested records (or) granting your request. (If the appeal is only partially granted, describe what portions remain in dispute). (If applicable): We are releasing and attaching all or portions of the responsive records. (If applicable): We will continue processing your appeal for the remaining withheld (records/information).

§ 806.28 Records with special disclosure procedures.

Certain records have special administrative procedures to follow before disclosure. Selected publications that contain such guidance are listed below.

(a) AFI 16–701, Special Access Programs.

(b) AFI 31–206, Security Police Investigations.

(c) AFI 31–501, Personnel Security Program Management.

(d) AFI 31–601, Industrial Security Program Management.

(e) AFI 36–2603, Air Force Board for Correction of Military Records.

(f) AFI 36–2706, Military Equal Opportunity and Treatment Program.

(g) AFI 36–2906, Personal Financial Responsibility.

(h) AFI 36–2907, Unfavorable Information File (UIF) Program.

(i) AFI 40–301, Family Advocacy.

(j) AFI 41–210, Patient Administration Functions.

(k) AFI 44–109, Mental Health and Military Law.

(l) AFI 51–201, Administration of Military Justice.

(m) AFI 51–301, Civil Litigation.

(n) AFI 51–303, Intellectual Property-Patents, Patent Related Matters, Trademarks, and Copyrights.

(o) AFI 51–501, Tort Claims.

(p) AFI 51–503, Aircraft, Missile, Nuclear and Space Accident Investigations.

(q) AFI 51–504, Legal Assistance, Notary and Preventive Law Programs.

(r) AFI 51–1102, Cooperation with the Office of the Special Counsel.

(s) AFI 61–204, Disseminating Scientific and Technical Information.

(t) AFI 61–303, Licensing Inventions Made Under Cooperative Research and Development Agreements.

(u) AFI 71–101, Volume 1, Criminal Investigations, and Volume 2, Protective Service Matters.

(v) AFI 84–101, Historical Products, Services, and Requirements.

(w) AFI 90–301, Inspector General Complaints.

(x) AFI 91–204, Safety Investigations and Reports.

§ 806.29 Administrative processing of Air Force FOIA requests.

(a) This section is a checklist format of processing steps and explanations of Air Force and DoD guidance. Each MAJCOM may elect to prepare its own checklists to tailor FOIA processing actions within its own organizations to meet their specific needs, so long as it remains consistent with guidance contained in DoD 5400.7–R, DoD Freedom of Information Act Program, and this part.

(b) Procedures: FOIA requests.

(1) Note the date the request was received, give the request a unique identifier/number, and log the request.

(2) Assess the request to determine initial processing requirements:

(3) Determine what Air Force elements may hold responsive records.

(i) Are responsive records kept at the same or different installations?

(ii) Is referral of (all/part) of the request required?

(4) Determine appropriate processing track (simple/complex/expedited). (Air Force FOIA offices without backlogs do not multitrack FOIA requests.)

NOTE: Requesters have a right to appeal an adverse tracking decision (for example, when it is determined their request will not be expedited). Also, if their request qualifies for the complex track, tell requesters so they may limit the scope of their request in order to qualify for the simple track. FOIA managers must assess a request before placing it into a specific processing track, and must support their actions should the requester appeal. If a request is determined to be complex, or is not expedited when the requester sought expedited processing, you must advise the requester of the adverse tracking decision in writing. See § 806.27 for sample language for this kind of letter to a requester.

(i) Simple. Defines a request that can be processed quickly, with limited impact on the responding units. The request clearly identifies the records, involves no (or few) complicating factors (e.g., there are few or no responsive records, involves only one installation and there are no outside OPRs, involves no classified records (Exemption 1), a law exempts the responsive records from disclosure (Exemption 3), no contractor-submitted records (Exemption 4), no deliberative process/privileged materials (Exemption 5), records contain no (or limited) personal privacy information/did not come from Privacy Act systems of records concerning other individuals (Exemption 6), release of records would have minimal impact on law enforcement (Exemption 7); no time extensions expected, other than the additional 10-workdays allowed in situations outlined in the FOIA). If the requested data must come from electronic records, response can be completed on a "business-as-usual" basis; requires no (or limited) reprogramming of automated information systems and would cause no significant interference with operation of information systems by processing a simple request/providing a response in the electronic format requested.

(ii) Complex. Defines a request whose processing will take substantial time,

will cause significant impact on responding units. Complications and delays are likely (e.g., the request is vague (poor description of records, unclear who or when records were created), records are massive in volume, multiple organizations will receive tasking, records are classified (Exemption 1), records came from another command/service/a nongovernment source (Exemption 4), records are part of the Air Force's decision-making process, and not incorporated into a final decision (IG/audit reports, legal opinions, misconduct or mishap investigations etc.) or are attorney-client records (Exemption 5), records are largely personal information on another individual or came from Privacy Act systems of records (Exemption 6), records describe law enforcement activities or information from (and/or identities of) confidential sources (Exemption 7); response cannot be completed on a "business as usual" basis and would require extensive reprogramming or cause significant interference with operation of the automated information systems. (Advise requester, in writing, of right to limit the scope of their request in order to qualify for simple track.)

(iii) An expedited request is when a requester asks for expedited processing and explains the compelling need (imminent threat to life or physical safety; urgently needed by a person primarily engaged in disseminating information; due process; or humanitarian need) for the requested information. In order to receive expedited processing, requesters must provide a statement certifying their "demonstration" (description) of their specific "compelling need" or due process/humanitarian need is true and correct to the best of their knowledge. When a requester seeks expedited processing, FOIA offices must respond in writing to the requester within 10 calendar days after receipt of the request approving or denying their request for expedited processing. Requesters have a right to appeal an adverse decision (e.g., when it is determined their requests will not be expedited). There are four categories of FOIA requests that qualify for expedited processing:

(A) The requester asserts a "compelling need" for the records, because a failure to obtain records quickly could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

(B) The requester asserts a "compelling need" for the records, because the information is "urgently needed" by an individual engaged in disseminating information to inform the public (primarily news media requesters; and could also include other persons with the ability to disseminate information).

NOTE: "Urgently needed," in this case, means the information has a particular value that will be lost if it is not disseminated quickly. This normally would apply to a breaking news story of general public interest. Information of historical interest only, or sought for litigation or commercial activities would not qualify, nor would the fact a news media entity had an internal broadcast deadline of its own, which was unrelated to the "news breaking nature" of the information itself, cause the requested information to qualify as "urgently needed."

(C) Failure to obtain records quickly could cause imminent loss of substantial due process rights or providing the information quickly would serve a "humanitarian need" (i.e., disclosing the information will promote the welfare and interests of mankind). While FOIA requests falling into these third and fourth categories can qualify for expedited processing, process them in the expedited track behind the requests qualifying for expedited processing based on "compelling need" (the first two types of expedited FOIA requests).

(5) Determine fee category of requester (commercial/educational—noncommercial scientific institution—news media/all others) and assess fee issues. When all assessable costs are $15.00 or less, waive fees automatically for all categories of requesters. Assess other fee waiver or reduction requests on a case-by-case basis.

(6) Apply fee waiver/fee reduction criteria in appropriate cases (when requester asks for fee waiver/reduction).

(7) Find the responsive Air Force records (if any).

(i) Send the request to the appropriate OPRs to search for responsive records and to decide whether to recommend release of any responsive

records. Include a DD Form 2086, Record of Freedom of Information (FOI), or a DD Form 2086–1, Record of Freedom of Information (FOI) Processing Cost for Technical Data, in each request. The OPR must complete and return the appropriate forms and statements to the FOIA office.

(ii) If the OPRs find no responsive records, or if the OPRs desire to withhold any responsive records from release to the requester, the OPRs must provide a written certificate detailing either their unsuccessful search, or their reasons why the documents should be withheld from release under the FOIA; the written OPR statements must accompany the copies of the records the OPR desires to withhold as the FOIA action is processed (e.g., include it in any denial or appeal file).

NOTE: If any part of a FOIA request is denied, and the requester appeals that denial, include all forms, certificates and documents prepared by the OPRs in the FOIA appeal package required in paragraph (d)(5) of this section.

(c) Contacts with FOIA requesters and non-Air Force submitters of data.

(1) Contacts with Air Force elements. A FOIA request is considered "received" (and therefore ready to process) when the FOIA office responsible for processing the request physically receives it, when the requester states a willingness to pay fees set for the appropriate fee category, or, if applicable, when the requester has paid any past FOIA debts and has reasonably described the requested records. Keep hard/paper copies of all memoranda documenting requester contacts with Air Force elements regarding a pending FOIA request in the requester's FOIA file. If the requester contacts Air Force elements telephonically about a pending FOIA request, the Air Force member participating in the conversation must prepare notes or memorandums for record (MFR), and keep those notes or MFRs in the requester's FOIA file. If any part of a FOIA request is denied, and the requester appeals that denial, submit documentation of requester contacts with Air Force elements in chronological order in the FOIA appeal package (see paragraph (d)(1) of this section).

(2) Contacts with the FOIA Requester. See § 806.27 for samples of language to use in various types of Air Force FOIA letters. If any part of a FOIA request is denied, and the requester appeals that denial, submit documents sent by Air Force elements to the requester in the FOIA appeal package in chronological order (see paragraph (d)(5) of this section). Letters that Air Force FOIA offices may need to send to a FOIA requester include:

(i) An initial notification letter that the FOIA request was received. This letter may advise the requester that processing of the FOIA request may be delayed because:

(A) All or part of the requested records are not located at the installation processing the FOIA request (see § 806.29(c)(2)(ii)).

(B) An enormous number of records must be collected and reviewed.

(C) Other Air Force activities or other agencies, to include (if applicable) the nongovernment submitter of information, need to be involved in deciding whether or not to release the records.

(D) If you cannot complete processing of a FOIA request within 20 workdays, advise the requester of the reasons for the delay and give a date (within 30 workdays after receiving the request) when the requester can expect a final decision.

(ii) The initial notification letter may advise the requester all/part of the request was referred to another Air Force element or government activity.

(iii) The initial notification letter may advise the requester of the appropriate fee category. In cases where fees are appropriate, and requesters have not agreed to pay for responsive records and fees are likely to be more than $15.00, seek assurances that the requester agrees to pay appropriate fees. If more information is needed to make a fee category determination, or to determine whether fees should be waived/reduced, inform the requester. FOIA offices may determine fee waiver/reduction requests before processing a FOIA request; if a fee waiver/reduction request is denied, the requester may

appeal that denial; he/she may also appeal an adverse fee category determination (e.g., asked for news media fees, but was assessed commercial fees.)

(iv) The initial notification letter may advise the requester the request does not sufficiently describe the desired records. If possible, help the requester identify the requested records by explaining what kind of information would make searching for responsive records easier.

(v) If Air Force elements can complete a FOIA request within the statutory 20-workday processing period, you may elect to send only a single letter to the requester, along with responsive records that are released to the requester in full.

(vi) A letter to the requester that the responding FOIA office uses multitrack processing due to a significant number of pending requests that prevents a response determination from being made within 20 workdays. This letter advises the FOIA requester that track the request is in (simple/complex); in this letter, if expedited processing was requested, the requester is advised if the request will be expedited or not. If the request is found to be complex, you must advise the requester he/she may alter the FOIA request to simplify processing. If it is determined the request will not be expedited, the requester must be told he/she can appeal. (This may be the initial letter to the requester, for Air Force elements with multitrack processing; if that is the case, this letter may include sections discussed in § 806.29(c)(2)(i)).

(vii) Subsequent letters to the requester on various subjects (for example, releasing requested records; advising reasons for delays; responding to the letters, facsimiles or calls; advising the requester of referrals to other Air Force units or government activities; involves a non-Air Force submitter, etc.).

(viii) A release letter to the requester, forwarding releasable responsive records with a bill (if appropriate).

(ix) A "no records" response letter to the requester if there are no responsive records, or, a denial letter, if any responsive records are withheld from release. FOIA managers may sign "no records" or "requested format not available" responses; they may also sign a letter that advises a requester the fee category sought was not determined to be appropriate, or that a fee waiver/fee reduction request was disapproved, or that a request for expedited processing has been denied. An IDA must sign any letter or document withholding responsive records. When denying records, you must tell the requester, in writing: the name and title or position of the official who made the denial determination, the basis for the denial in enough detail to permit the requester to make a decision concerning appeal, and the FOIA exemptions on which the denial is based. The denial letter must include a brief statement describing what the exemptions cover. When the initial denial is based (in whole or in part) on a security classification, this explanation should include a summary of the applicable executive order criteria for classification, as well as an explanation of how those criteria apply to the particular record in question. Estimate the volume of the records denied and provide this estimate to the requester, unless providing such an estimate would harm an interest protected by an exemption of the FOIA. This estimate should be in number of pages or, for records in other media, in some other reasonable form of estimation, unless the volume is otherwise indicated through deletions on records disclosed in part. Indicate the size and location of the redactions on the records released. You must also tell the requester how he/she can appeal the denial.

(3) Contacts with non-Air Force submitters of data. Before releasing data (information or records) submitted from outside the Air Force, determine whether you need to write to the submitter of the data for their views on releasability of their data. In many cases, this non-Air Force data may fall under FOIA Exemption 4. If it appears you must contact the submitter of the data, advise the requester in writing that you must give the submitter of the data the opportunity to comment before the Air Force decides whether to release the information. Give the submitter a reasonable period of time (30 calendar days) to object to release and

provide justification for withholding the documents. If the submitter does not respond, advise the submitter in writing that you have not received a reply and plan to release the records. Provide the submitter with the reasons the Air Force will release the records, and give the submitter your expected release date (at least 2 weeks from the date of your letter). This permits the submitter time to seek a temporary restraining order (TRO) in federal court, if they can convince the judge to issue such an order. See § 806.27 for samples of language to use in Air Force letters to both the FOIA requester and nongovernment submitters. Remember to include a copy of § 806.31 as an attachment to the letter sent to the nongovernment submitter.

(i) The notice requirements of this section need not be followed if the Air Force determines that the information should not be disclosed, the information has been lawfully published or officially made available to the public, or disclosure of the information is required by law.

(ii) If the submitter objects to release of the records, but the Air Force disclosure authority considers the records releasable, tell the submitter before releasing the data. Include in the letter to the submitter a brief explanation and a specific release date at least 2 weeks from the date of the letter. Advise the submitter once a determination is made that release of the data is required under the FOIA, failure to oppose the proposed release will lead to release of submitted data. Also advise the requester such a release under the FOIA will result in the released information entering the public domain, and that subsequent requests for the same information will be answered without any formal coordination between the Air Force and the submitter, unless the information is later amended, changed, or modified. A person equal to, or higher in rank than, the denial authority makes the final decision to disclose responsive records over the submitter's objection.

(iii) When a previously released contract document has been modified, any contract documents not in existence at the time of an earlier FOIA request that are responsive to a later FOIA request for the same contract, will be processed as a first-time FOIA request for those newly created documents. Notify the nongovernment submitter of the pending FOIA action, and give them the same opportunity to respond as is detailed above. Passage of a significant period of time since the prior FOIA release can also require Air Force elements to comply with the notice requirements in this paragraph.

(d) Denying all or part of a request. When responsive records are withheld from release (denied), the appropriate offices must prepare a denial package for the IDA. Air Force elements must send the request, related documents, and responsive records through their IDA's FOIA office to the IDA for a decision. The denial package must include:

(1) The FOIA request and any modifications by the requester.

(2) A copy of the responsive records, including both records that may be released and records recommended for denial.

(3) Written recommendations from the OPRs and an Air Force attorney.

(4) The exemptions cited and a discussion of how the records qualify for withholding under the FOIA. This discussion should also include the reasons for denial: to deny release of responsive records requested under the FOIA, you must determine that disclosure of the records would result in a foreseeable harm to an interest protected by a FOIA exemption (or exemptions), that the record is exempt from release under one or more of the exemptions of the FOIA, and that a discretionary release is not appropriate.

(5) Any collateral documents that relate to the requested records. For example:

(i) If the requested records came from a non-Air Force or non-U.S. Federal Government submitter, include any documents from the submitter that relate to the release or denial of the requested records. If you are not sure whether or not the non-Air Force or non-U.S. Federal Government submitted information is potentially exempt from release under the FOIA, contact an Air Force attorney. FOIA Exemptions 3, 4, 5, 6, and 7 may apply.

(ii) If the requested records came from Privacy Act systems of records,

include a written discussion of any Privacy Act issues.

(iii) If any requested records came from another Air Force element, or release of the requested records would affect another Air Force element, FOIA offices should coordinate with that other element. If the FOIA request is not completely referred to the other element, include documents from that element.

(iv) If any requested records are classified, include a written certification from a classification authority or declassification authority stating the data was properly classified originally, that it remains properly classified (per E.O. 12958), and, if applicable, that no reasonably segregable portions can be released.

(e) FOIA appeal actions.

(1) If an IDA, or a FOIA office responding on behalf of an IDA, withholds a record from release because they determine the record is exempt under one or more of the exemptions to the FOIA, the requester may appeal that decision, in writing, to the Secretary of the Air Force. The appeal should be accompanied by a copy of the denial letter. FOIA appeals should be postmarked within 60 calendar days after the date of the denial letter, and should contain the reasons the requester disagrees with the initial denial. Late appeals may be rejected, either by the element initially processing the FOIA appeal, or by subsequent denial authorities, if the requester does not provide adequate justification for the delay. Appeal procedures also apply to the denial of a fee category claim by a requester, denial of a request for waiver or reduction of fees, disputes regarding fee estimates, review on an expedited basis of a determination not to grant expedited access to agency records, and for "no record" or "requested format not available" determinations when the requester considers such responses adverse in nature.

(2) Coordinate appeals with an Air Force attorney (and the OPR, if appropriate) so they can consider factual and legal arguments raised in the appeal, and can prepare written assessments of issues raised in the appeal to assist the IDA in considering the appeal. MAJCOM FOIA offices and 11 CS/SCSR (for OPRs at HQ USAF and SAF), send all appeals to the Secretary of the Air Force through AFLSA/JACL for consideration, unless the IDA has reconsidered the initial denial action, and granted the appeal.

(3) If a requester appeals a "no records" determination, organizations must search again or verify the adequacy of their first search (for example, if a second search would be fruitless, the organization may include a signed statement from either the records OPR or the MAJCOM FOIA manager detailing why another search was not practical). The appeal package must include documents (to include a certification from the records OPR) that show how the organization tried to find responsive records. In the event a requester sues the Air Force to contest a determination that no responsive records exist, formal affidavits will be required to support the adequacy of any searches conducted.

(4) General administrative matters. FOIA requesters may ultimately sue the Air Force in federal court if they are dissatisfied with adverse determinations. In these suits, the contents of the administrative appeal file are evaluated to determine whether the Air Force complied with the FOIA and its own guidance. Improper or inadequate appeal files make defending these cases problematic. Include all the documents related to the requester's FOIA action in the appeal file. If appeal file documents are sensitive, or are classified up to the SECRET level, send them separately to AFLSA/JACL, 1501 Wilson Boulevard, 7th Floor, Arlington, VA 22209–2403. Make separate arrangements with AFLSA/JACL for processing classified appeal file documents TOP SECRET or higher. Cover letters on appeal packages need to list all attachments. If a FOIA action is complicated, a chronology of events helps reviewers understand what happened in the course of the request and appeal. If an appeal file does not include documentation described below, include a blank sheet in proper place and mark as "not applicable," "N/A," or "not used." Do not renumber and move the other items up. If any part of the requester's appeal is denied, the appeal

package must include a signed statement by the IDA, demonstrating the IDA considered and rejected the requester's arguments, and the basis for that decision. This may be a separate memorandum, an endorsement on a legal opinion or OPR opinion, or the cover letter which forwards the appeal for final determination. Include in the cover letter forwarding the appeal to the Secretary of the Air Force the name, phone number and e-mail address (if any) of the person to contact about the appeal. The order and contents of appeal file attachments follow.

(i) The original appeal letter and envelope.

(ii) The initial FOIA request, any modifications of the request by the requester or any other communications from the requester, in chronological order.

(iii) The denial letter.

(iv) Copies of all records already released. (An index of released documents may be helpful, if there are a number of items. If the records released are "massive" (which means "several cubic feet") and AFLSA/JACL agrees, an index or description of the records may be provided in place of the released records. Do not send appeal files without copies of released records without the express agreement of AFLSA/JACL. Usually AFLSA/JACL requires all the released records in appeal files. If you do not send the released records to AFLSA/JACL when a FOIA requester has appealed a partial denial, retain a copy of what was released for 6 years.)

(v) Copies of all administrative processing documents, including extension letters, search descriptions, and initial OPR recommendations about the request, in chronological order.

(vi) Copies of the denied records or portions marked to show what was withheld. If your organization uses a single set of highlighted records (to show items redacted from records released to the requester), ensure the records are legible and insert a page in the appropriate place stating where the records are located. (An index of denied documents may be helpful, if there are a number of items. If the records denied are "massive" (which means "several cubic feet") and AFLSA/JACL agrees, an index or description of the records may be provided in place of the denied records. Do not send appeal files without copies of denied records without the express agreement of AFLSA/JACL. Usually AFLSA/JACL requires all the denied records in appeal files. If you do not send the denied records to AFLSA/JACL, when a FOIA requester has appealed a denial, retain a copy of what was denied for 6 years.)

(vii) All legal opinions in chronological order. Include a point-by-point discussion of factual and legal arguments in the requester's appeal (prepared by an Air Force attorney and/or the OPR). If the IDA does not state in the cover letter he/she signed, that he/she considered and rejected the requester's arguments, asserting the basis for that decision (e.g., the IDA concurs in the legal and/or OPR assessments of the requester's arguments) include a signed, written statement containing the same information from the IDA, either as a separate document or an endorsement to a legal or OPR assessment. Include any explanation of the decision-making process for intra-agency documents denied under the deliberative process privilege and how the denied material fits into that process (if applicable).

§ 806.30 FOIA exempt information examples.

(a) Certain responsive records may contain parts that are releasable, along with other parts that the Air Force must withhold from release. Carefully delete information exempt from release under the FOIA from copies of otherwise releasable records. Do not release copies that would permit the requester to "read through the marking." In order to assist FOIA managers in redacting records, selected items appropriate to withhold in commonly requested Air Force records are illustrated below. When providing releasable portions from classified paragraphs, line through and do not delete, the classification marking preceding the paragraph.

(b) Exemption 1. Example used is an extract from a "simulated" contingency plan (all information below is fictional

and UNCLASSIFIED; parenthetical information and marking is used for illustrative purposes only).

(U) Air Force members will safeguard all FELLOW YELLOW data (NOTE: FELLOW YELLOW simulates an UNCLASSIFIED code name).

During the contingency deployment in Shambala, those members assigned to force element FELLOW YELLOW will cover their movements by employing specified camouflage and concealment activities while behind enemy lines. Only secure communications of limited duration as specified in the communications annex will be employed until FELLOW YELLOW personnel return to base. (Exemption 1)

(c) Exemption 2. Example used is an extract from a "simulated" test administration guide (all information below is fictional and is used for illustrative purposes only).

When administering the test to determine which technicians are ranked fully qualified, make sure to allow only the time specified in HQ AETC Pamphlet XYZ, which the technicians were permitted to review as part of their test preparation. For ease in scoring this exam, correct answers are A, A, B, B, A, B, C, C, A, B, D, D, C, C, C, D; the corresponding template for marking the standard answer sheet is kept locked up at all times when not in use to grade answer sheets. (Exemption "high" 2)

(d) Exemption 5. Example used is a simulated IG Report of Investigation (ROI) recommendation. All parenthetical information in this example is fictional and is used for illustrative purposes only:

Having interviewed the appropriate personnel and having reviewed the appropriate documents, I recommend additional training sessions for all branch personnel on accepted Air Force standards, and the Air Force pursue administrative or judicial disciplinary action with respect to Terry Hardcase. (Exemption 5)

(e) Exemption 6. Example used is a simulated personnel computer report on a military member selected for a special assignment (all information below is fictional; information and marking is used for illustrative purposes only.):

SSgt Doe, Kerry E.	SSN: 111–11–1112	Date of Birth: 22 Jun 71
Duty Title: Special Assistant to CINCPAC	Office Symbol: CINCPAC/CCSA	
Duty Station: Hickam AFB HI 11111–1111	Date Assigned: 12 June 1998	
Marital Status: Divorced	Dependents: 01	Home Address: 12 Anystreet, Downtown ST 11112
Home Phone: (112) 223–3344 (Exemption 6)		

(f) Exemption 7. Example used is summary of a law enforcement report on a domestic disturbance at on-base family housing (all information below is fictional and all parenthetical information is used for illustrative purposes only):

At 2140, the law enforcement desk, extension 222–3456, took an anonymous call that reported a disturbance at 1234 Basestreet, quarters allegedly occupied by two military members. SrA Patrolman (names of law enforcement investigators usually are withheld under Exemptions 6 and 7(C)) arrived on the scene at 2155. SrA Patrolman met Nora Neighbor, (names of witnesses usually are withheld under Exemptions 6 and 7(C)) who was very agitated. Because she feared her neighbors would retaliate against her if they knew she reported their fight, she asked that her name not be released before she would talk. After she was promised her identity would remain anonymous, she stated: (Nora Neighbor became a confidential informant; data that could identify her, and in some cases, the information she related, should be withheld from release under Exemptions 6, 7(C) and (D).) "I heard cursing and heard furniture and dishes breaking. They fight all the time. I've seen Betty Battle (unless Betty is the requester, redact her name Exemptions 6 and 7(C)) with a black eye, and I also saw Bob Battle (unless Bob is the requester, redact his name Exemptions 6 and 7(C)) with bruises the day after they had their last fight, last Saturday night. This time, there was a tremendous crash; I heard a man scream "My Lord NO!" then I saw Betty Battle come out of the house with dark stains on her clothes—she got into her car and drove away. I could see this really well, because the streetlight is right between our houses; I'm the wife of their NCOIC. If only Nick, my husband, was here now, he'd know what to do! I haven't heard anything from Bob Battle." (Exemptions 6 and 7)

§ 806.31 Requirements of 5 U.S.C. 552(b)(4) to submitters of nongovernment contract-related information.

(a) The FOIA requires federal agencies to provide their records, except those specifically exempted, for the public to inspect and copy. Section (b) of the Act lists nine exemptions that are the only basis for withholding records from the public.

(b) In this case, the fourth exemption, 5 U.S.C. 552(b)(4), may apply to records or information the Air Force maintains. Under this exemption, agencies must withhold trade secrets and commercial or financial information they obtained from a person or organization outside the government that is privileged or confidential. This generally includes information provided and received during the contracting process with the understanding that the Air Force will keep it privileged or confidential.

(c) Commercial or financial matter is "confidential" and exempt if its release will probably:

(1) Impair the government's ability to obtain necessary information in the future.

(2) Substantially harm the source's competitive position or impair some other legitimate government interest such as compliance and program effectiveness.

(d) Applicability of exemption. The exemption may be used to protect information provided by a nongovernment submitter when public disclosure will probably cause substantial harm to its competitive position. Examples of information that may qualify for this exemption include:

(1) Commercial or financial information received in confidence with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

NOTE: Certain proprietary and source selection information may also fall under exemption (b)(3), under the provisions of 10 U.S.C. 2305(g) or 41 U.S.C. 423, if statutory requirements are met.

(2) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given during inspections, investigations, or audits, received and kept in confidence because they reveal trade secrets or commercial or financial information, normally considered confidential or privileged.

(4) Financial data that private employers give in confidence for local wage surveys used to set and adjust pay schedules for the prevailing wage rate of DoD employees.

(5) Information about scientific and manufacturing processes or developments that is technical or scientific or other information submitted with a research grant application, or with a report while research is in progress.

(6) Technical or scientific data a contractor or subcontractor develops entirely at private expense, and technical or scientific data developed partly with Federal funds and partly with private funds, in which the contractor or subcontractor retains legitimate proprietary interests per 10 U.S.C. 2320 to 2321 and 48 CFR, Chapter 2, 227.71–227.72.

(7) Computer software copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would adversely impact its potential market value.

(e) Submitter's Written Response. If release of the requested material would prejudice your commercial interests, give detailed written reasons that identify the specific information and the competitive harm public release will cause to you, your organization, or your business. The act requires the Air Force to provide any reasonably segregable part of a record after deleting exempt portions. If deleting key words or phrases would adequately protect your interests, advise us in writing which portions you believe we can safely release, and which portions you believe we need to withhold from release. If you do not provide details on the probability of substantial harm to your competitive position or other commercial interests, which would be caused by releasing your material to the requester, we may be required to release the information. Records qualify for protection on a case by case basis.

(f) Pricing Information. Generally, the prices a contractor charges the government for goods or services would be released under the FOIA. Examples of releasable data include: bids submitted in response to an invitation for bids (IFB), amounts actually paid by the government under a contract, and line item prices, contract award price, and modifications to a contract. Unit prices contained in a contract award are considered releasable as part of the post award notification procedure prescribed by 48 CFR 15.503, unless they are part of an unsuccessful proposal, then 10 U.S.C. 2305(g) protects everything including unit price.

APPENDIX A TO PART 806—REFERENCES

Title 5, United States Code, Section 552, The Freedom of Information Act, as amended
Title 5, United States Code, Section 552a, The Privacy Act (as amended)
Title 10, United States Code, Section 2305(g), Prohibition on Release of Contractor Proposals
Title 48, Code of Federal Regulations (CFR), Federal Acquisition Regulations (FAR) System
OMB Bulletin 95–01, 7 December 1994
OMB Memorandum, 6 February 1998
DoD 5200.1–R, Information Security Program, January 1997
AFI 16–701, Special Access Programs
AFI 31–206, Security Police Investigations
AFI 31–401, Information Security Program Management
AFI 31–501, Personnel Security Program Management
AFI 31–601, Industrial Security Program Management
AFI 33–129, Transmission of Information Via the Internet
AFI 35–205, Air Force Security and Policy Review Program
AFI 36–2603, Air Force Board for Correction of Military Records
AFI 36–2706, Military Equal Opportunity and Treatment Program
AFI 36–2906, Personal Financial Responsibility
AFI 36–2907, Unfavorable Information File (UIF) Program
AFPD 37–1, Air Force Information Management (will convert to AFPD 33–3)
AFI 37–124, The Information Collections and Reports Management Program; Controlling Internal, Public, and Interagency Air Force Information Collections (will convert to AFI 33–324)
AFI 37–132, Air Force Privacy Act Program (will convert to AFI 33–332)
AFMAN 37–139, Records Disposition Schedule (will convert to AFMAN 33–339)
AFI 40–301, Family Advocacy
AFI 41–210, Patient Administration Functions
AFI 44–109, Mental Health and Military Law
AFI 51–201, Administration of Military Justice
AFI 51–301, Civil Litigation
AFI 51–303, Intellectual Property-Patents, Patent Related Matters, Trademarks, and Copyrights
AFI 51–501, Tort Claims
AFI 51–503, Aircraft, Missile, Nuclear and Space Accident Investigations
AFI 51–504, Legal Assistance, Notary and Preventive Law Programs
AFI 51–1102, Cooperation with the Office of the Special Counsel
AFI 61–204, Disseminating Scientific and Technical Information
AFI 61–303, Licensing Inventions Made Under Cooperative Research and Development Agreements
AFI 65–401, Relations With the General Accounting Office
AFI 71–101, Volume 1, Criminal Investigations
AFI 71–101, Volume 2, Protective Service Matters
AFI 84–101, Historical Products, Services, and Requirements
AFI 90–301, Inspector General Complaints
AFI 90–401, Air Force Relations With Congress
AFI 91–204, Safety Investigations and Reports

APPENDIX B TO PART 806—ABBREVIATIONS AND ACRONYMS

AFCA—Air Force Communications Agency
AFCIC—Air Force Communications and Information Center
AFRC—Air Force Reserve Command
AFI—Air Force Instruction
AFLSA/JACL—Air Force Legal Services Agency, General Litigation Division
AFMAN—Air Force Manual
AFPC/MSIMD—Air Force Personnel Center/Records Management, FOIA, and Privacy Act Office
AFPD—Air Force Policy Directive
ANG—Air National Guard
ASCII—American Standard Code for Information Interchange
CFR—Code of Federal Regulations
DFAS—Defense Finance and Accounting Service
DFOISR—Director, Freedom of Information and Security Review
DoD—Department of Defense
DRU—Direct Reporting Unit
EFOIA—Electronic Freedom of Information Act
ERR—Electronic Reading Room
FOA—Field Operating Agency
FOIA—Freedom of Information Act
FOUO—For Official Use Only

GAO—General Accounting Office
GILS—Government Information Locator Service
GPO—Government Printing Office
IDA—Initial Denial Authority
IG—Inspector General
IMPAC—International Merchant Purchase Authority Card
LOA—Letters of Offer and Acceptance
MAJCOM—Major Command
MFR—Memorandum for Record
NATO—North Atlantic Treaty Organization
NORAD—North American Aerospace Defense
NTIS—National Technical Information Service
OCR—Office of Corollary Responsibility
OMB—Office of Management and Budget
OPR—Office of Primary Responsibility
PA—Privacy Act
PAO—Public Affairs Office
PAS—Personnel Accounting Symbol
RCS—Reports Control Symbol
SAF—Secretary of the Air Force
SSN—Social Security Number
USAF—United States Air Force
U.S.C.—United States Code
WWW—World Wide Web

APPENDIX C TO PART 806—TERMS

Appellate Authority—The Office of the General Counsel to the Secretary of the Air Force (SAF/GCA).
Denial—An adverse determination on no records, fees, expedited access, or not disclosing records.
Determination—The written decision to release or deny records or information that is responsive to a request.
Disclosure—Providing access to, or one copy of, a record.
Disclosure Authority—Official authorized to release records, normally division chiefs or higher.
FOIA Manager—The person who manages the FOIA Program at each organizational level.
FOIA Request—A written request for DoD records from the public that cites or implies the FOIA.
Functional Request—Any request for records from the public that does not cite the FOIA.
Government Information Locator Service (GILS)—An automated on-line card catalog of publicly accessible information.
Glomar Response—A reply that neither confirms nor denies the existence or nonexistence of the requested record.
Initial Denial Authority (IDA)—Persons in authorized positions that may withhold records.
Partial Denial—A decision to withhold part of a requested record.
Public Interest—The interest in obtaining official information that sheds light on how an agency performs its statutory duties and informs citizens about what their government is doing.
Reading Room—A place where the public may inspect and copy, or have copied, releasable records.
Records—The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the U.S. Government under Federal Law in connection with the transaction of public business and in the agency's possession and control at the time the FOIA request is made. Records include notes, working papers, and drafts.
Redact—To remove nonreleasable material.

PART 806b—PRIVACY ACT PROGRAM

Subpart A—Overview of the Privacy Act Program

Sec.
806b.1 Summary of revisions.
806b.2 Basic guidelines.
806b.3 Violation penalties.
806b.4 Privacy Act complaints.
806b.5 Personal notes.
806b.6 Systems of records operated by a contractor.
806b.7 Responsibilities.

Subpart B—Obtaining Law Enforcement Records and Confidentiality Promises

806b.8 Obtaining law enforcement records.
806b.9 Confidentiality promises.

Subpart C—Collecting Personal Information

806b.10 How to collect personal information.
806b.11 When To Give Privacy Act Statements (PAS).
806b.12 Requesting the Social Security Number.

Subpart D—Giving Access to Privacy Act Records

806b.13 Making a request for access.
806b.14 Processing a request for access.
806b.15 Fees.
806b.16 Denying or limiting access.
806b.17 Special provision for certain medical records.
806b.18 Third party information in a Privacy Act System of records.
806b.19 Information compiled in anticipation of civil action.
806b.20 Denial authorities.

Subpart E—Amending the Record

806b.21 Amendment reasons.
806b.22 Responding to amendment requests.
806b.23 Approving or denying a record amendment.
806b.24 Seeking review of unfavorable Agency determinations.
806b.25 Contents of Privacy Act case files.

Subpart F—Appeals

806b.26 Appeal procedures.

Subpart G—Privacy Act Notifications

806b.27 When to include a Privacy Act warning statement in publications.
806b.28 Warning banners.
806b.29 Sending personal information over electronic mail.

Subpart H—Privacy Impact Assessments

806b.30 Evaluating information systems for Privacy Act compliance.

Subpart I—Preparing and Publishing System Notices for the Federal Register

806b.31 Publishing System notices.
806b.32 Submitting notices for publication in the FEDERAL REGISTER.
806b.33 Reviewing notices.

Subpart J—Protecting and Disposing of Records

806b.34 Protecting records.
806b.35 Balancing protection.
806b.36 Disposing of records.

Subpart K—Privacy Act Exemptions

806b.37 Exemption types.
806b.38 Authorizing exemptions.
806b.39 Requesting an exemption.
806b.40 Exemptions.

Subpart L—Disclosing Records to Third Parties

806b.41 Disclosure considerations.
806b.42 Social rosters.
806b.43 Placing personal information on shared drives.
806b.44 Personal information that requires protection.
806b.45 Releasable information.
806b.46 Disclosing other information.
806b.47 Rules for releasing Privacy Act information without the consent of the subject.
806b.48 Disclosing the medical records of minors.
806b.49 Disclosure accountings.
806b.50 Computer matching.
806b.51 Privacy and the Web.

Subpart M—Training

806b.52 Who needs training?
806b.53 Training tools.
806b.54 Information collections, records, and forms or Information Management Tools (IMT).

APPENDIX A TO PART 806b—DEFINITIONS
APPENDIX B TO PART 806b—PREPARING A SYSTEM NOTICE
APPENDIX C TO PART 806b—DOD "BLANKET ROUTINE USES"
APPENDIX D TO PART 806b—GENERAL AND SPECIFIC EXEMPTIONS
APPENDIX E TO PART 806b—PRIVACY IMPACT ASSESSMENT

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Subpart A—Overview of the Privacy Act Program

§ 806b.1 Summary of revisions.

This part moves responsibility for the Air Force Privacy Program from Air Force Communications and Information Center to the Air Force Chief Information Officer; prescribes Air Force Visual Aid 33–276, Privacy Act Label as optional; adds the *E-Gov Act of 2002* requirement for a Privacy Impact Assessment for all information systems that are new or have major changes; changes appeal processing from Air Force Communications and Information Center to Air Force Legal Services Agency; adds Privacy Act warning language to use on information systems subject to the Privacy Act, includes guidance on sending personal information via e-mail; adds procedures on complaints; and provides guidance on recall rosters; social rosters; consent statements, systems of records operated by a contractor, and placing information on shared drives.

§ 806b.2 Basic guidelines.

This part implements the *Privacy Act of 1974*[1] and applies to records on living U.S. citizens and permanent resident aliens that are retrieved by name or

[1] *http://www.usdoj.gov/04foia/privstat.htm.*

personal identifier. This part also provides guidance on collecting and disseminating personal information in general.

(a) Records that are retrieved by name or personal identifier are subject to Privacy Act requirements and are referred to as Privacy Act systems of records. The Air Force must publish notices in the FEDERAL REGISTER, describing the collection of information for new, changed or deleted systems to inform the public and give them an opportunity to comment before implementing or changing the system. (see appendix B to this part).

(b) An official system of records is:

(1) Authorized by law or Executive Order.

(2) Needed to carry out an Air Force mission or function.

(3) Published in the FEDERAL REGISTER.

(c) The Air Force will not:

(1) Keep records on how a person exercises First Amendment rights. Exceptions are when: The Air Force has the permission of that individual or is authorized by Federal statute; or the information pertains to, and is within the scope of, an authorized law enforcement activity. First Amendment rights include, but are not limited to, freedom of religion, freedom of political beliefs, freedom of speech, freedom of the press, the right to assemble, and the right to petition.

(2) Penalize or harass an individual for exercising rights guaranteed under the Privacy Act. We must reasonably help individuals exercise their rights under the Privacy Act.

(d) Air Force members will:

(1) Keep paper and electronic records that are retrieved by name or personal identifier only in approved Privacy Act systems published in the FEDERAL REGISTER.

(2) Collect, maintain, and use information in such systems, for purposes described in the published notice, to support programs authorized by law or Executive Order.

(3) Safeguard the records in the system and keep them the minimum time required.

(4) Ensure records are timely, accurate, complete, and relevant.

(5) Amend and correct records on request.

(6) Allow individuals to review and receive copies of their own records unless the Secretary of the Air Force approved an exemption for the system; or the Air Force created the records in anticipation of a civil action or proceeding (5 U.S.C. 552a(d)(5)).

(7) Provide a review of decisions that deny individuals access to or amendment of their records through appellate procedures.

§ 806b.3 Violation penalties.

An individual may file a civil law suit against the Air Force for failing to comply with the Privacy Act. The courts may find an individual offender guilty of a misdemeanor and fine that individual offender not more than $5,000 for:

(a) Willfully maintaining a system of records that doesn't meet the public notice requirements.

(b) Disclosing information from a system of records to someone not entitled to the information.

(c) Obtaining someone else's records under false pretenses.

§ 806b.4 Privacy Act complaints.

(a) Process Privacy Act complaints or allegations of Privacy Act violations through the appropriate base or Major Command Privacy Act office, to the local systems manager. The base or Major Command Privacy Act officer directs the process and provides guidance to the system manager. The local systems manager will investigate complaints, or allegations of Privacy Act violations; will establish and review the facts when possible; interview individuals as needed; determine validity of the complaint; take appropriate corrective action; and ensure a response is sent to the complainant through the Privacy Act Officer. In cases where no system manager can be identified, the local Privacy Act officer will assume these duties. Issues that cannot be resolved at the local level will be elevated to the Major Command Privacy Office. When appropriate, local system managers will also: refer cases for more formal investigation, refer cases for

command disciplinary action, and consult the servicing Staff Judge Advocate. In combatant commands, process component unique system complaints through the respective component chain of command.

(b) For Privacy Act complaints filed in a U.S. District Court against the Air Force, an Air Force activity, or any Air Force employee, Air Force Legal Services Agency, General Litigation Division (JACL) will provide Air Force Chief Information Officer/P a litigation summary to include: The case number, requester name, the nature of the case (denial of access, refusal to amend, incorrect records, or specify the particular violation of the Privacy Act), date complaint filed, court, defendants, and any appropriate remarks, as well as updates during the litigation process. When the court renders a formal opinion or judgment, Air Force Legal Services Agency, General Litigation Division (JACL) sends Air Force Chief Information Officer/P a copy of the judgment and opinion.

§ 806b.5 Personal notes.

The Privacy Act does not apply to personal notes on individuals used as memory aids. Personal notes may become Privacy Act records if they are retrieved by name or other personal identifier and at least one of the following three conditions apply: Keeping or destroying the records is not at the sole discretion of the author; the notes are required by oral or written directive, regulation, or command policy; or they are shown to other agency personnel.

§ 806b.6 Systems of records operated by a contractor.

Contractors who are required to operate or maintain a Privacy Act system of records by contract must follow this part for collecting, safeguarding, maintaining, using, accessing, amending and disseminating personal information. The record system affected is considered to be maintained by the Air Force and is subject to this part. Systems managers for offices who have contractors operating or maintaining such record systems must ensure the contract contains the proper Privacy Act clauses, and identify the record system number, as required by the Defense Acquisition Regulation and this part.

(a) Contracts for systems of records operated or maintained by a contractor will be reviewed annually by the appropriate Major Command Privacy Officer to ensure compliance with this part.

(b) Disclosure of personal records to a contractor for use in the performance of an Air Force contract is considered a disclosure within the agency under exception (b)(1) of the Privacy Act (*see* § 806b.47(a)).

§ 806b.7 Responsibilities.

(a) The Air Force Chief Information Officer is the senior Air Force Privacy Official with overall responsibility for the Air Force Privacy Act Program.

(b) The Office of the General Counsel to the Secretary of the Air Force, Fiscal and Administrative Law Division (GCA) makes final decisions on appeals.

(c) The General Litigation Division, Air Force Legal Services Agency (JACL), receives Privacy Act appeals and provides recommendations to the appellate authority. Service unique appeals, from combatant commands, should go through the respective chain of command.

(d) The Plans and Policy Directorate, Office of the Chief Information Officer manages the program through the Air Force Privacy Act Officer who:

(1) Administers procedures outlined in this part.

(2) Reviews publications and forms for compliance with this part.

(3) Reviews and approves proposed new, altered, and amended systems of records; and submits system notices and required reports to the Defense Privacy Office.

(4) Serves as the Air Force member on the Defense Privacy Board and the Defense Data Integrity Board.

(5) Provides guidance and assistance to Major Commands, field operating agencies, direct reporting units and combatant commands for which AF is executive agent in their implementation and execution of the Air Force Privacy Program. Ensures availability of training and training tools for a variety of audiences.

(6) Provides advice and support to those commands to ensure that information requirements developed to collect or maintain personal data conform to Privacy Act standards; and that appropriate procedures and safeguards are developed, implemented, and maintained to protect the information.

(e) Major Command commanders, and Deputy Chiefs of Staff and comparable officials at Secretary of the Air Force and Headquarters United States Air Force offices implement this part.

(f) 11th Communications Squadron will provide Privacy Act training and submit Privacy Act reports for Headquarters United States Air Force and Secretary of the Air Force offices.

(g) Major Command Commanders: Appoint a command Privacy Act officer, and send the name, office symbol, phone number, and e-mail address to Air Force Chief Information Officer/P.

(h) Major Command and Headquarters Air Force Functional Chief Information Officers:

(1) Review and provide final approval on Privacy Impact Assessments (*see* appendix E of this part).

(2) Send a copy of approved Privacy Impact Assessments to Air Force Chief Information Officer/P.

(i) Major Command Privacy Act Officers:

(1) Train base Privacy Act officers. May authorize appointment of unit Privacy Act monitors to assist with implementation of the program.

(2) Promote Privacy Act awareness throughout the organization.

(3) Review publications and forms for compliance with this part (do forms require a Privacy Act Statement; is Privacy Act Statement correct?).

(4) Submit reports as required.

(5) Review system notices to validate currency.

(6) Evaluate the health of the program at regular intervals using this part as guidance.

(7) Review and provide recommendations on completed Privacy Impact Assessments for information systems.

(8) Resolve complaints or allegations of Privacy Act violations.

(9) Review and process denial recommendations.

(10) Provide guidance as needed to functionals on implementing the Privacy Act.

(j) Base Privacy Act Officers:

(1) Provide guidance and training to base personnel.

(2) Submit reports as required.

(3) Review publications and forms for compliance with this part.

(4) Review system notices to validate currency.

(5) Direct investigations of complaints/violations.

(6) Evaluate the health of the program at regular intervals using this part as guidance.

(k) System Managers:

(1) Manage and safeguard the system.

(2) Train users on Privacy Act requirements.

(3) Protect records from unauthorized disclosure, alteration, or destruction.

(4) Prepare system notices and reports.

(5) Answer Privacy Act requests.

(6) Records of disclosures.

(7) Validate system notices annually.

(8) Investigate Privacy Act complaints.

(l) System owners and developers:

(1) Decide the need for, and content of systems.

(2) Evaluate Privacy Act requirements of information systems in early stages of development.

(3) Complete a Privacy Impact Assessment and submit to the Privacy Act Officer.

Subpart B—Obtaining Law Enforcement Records and Confidentiality Promises

§ 806b.8 Obtaining law enforcement records.

The Commander, Air Force Office of Special Investigation; the Commander, Air Force Security Forces Center; Major Command, Field Operating Agency, and base chiefs of security forces; Air Force Office of Special Investigations detachment commanders; and designees of those offices may ask another agency for records for law enforcement under 5 U.S.C. 552a(b)(7). The requesting office must indicate in writing the specific part of the record desired and identify the law enforcement activity asking for the record.

§806b.9 Confidentiality promises.

Promises of confidentiality must be prominently annotated in the record to protect from disclosure any "confidential" information under 5 United States Code 552a(k)(2), (k)(5), or (k)(7) of the Privacy Act.

Subpart C—Collecting Personal Information

§806b.10 How to collect personal information.

Collect personal information directly from the subject of the record whenever possible. Only ask third parties when:

(a) You must verify information.

(b) You want opinions or evaluations.

(c) You can't contact the subject.

(d) You are doing so at the request of the subject individual.

§806b.11 When to give Privacy Act Statements (PAS).

(a) Give a PAS orally or in writing to the subject of the record when you are collecting information from them that will go in a system of records. Note: Do this regardless of how you collect or record the answers. You may display a sign in areas where people routinely furnish this kind of information. Give a copy of the Privacy Act Statement if asked. Do not ask the person to sign the Privacy Act Statement.

(b) A Privacy Act Statement must include four items:

(1) *Authority:* The legal authority, that is, the U.S.C. or Executive Order authorizing the program the system supports.

(2) *Purpose:* The reason you are collecting the information and what you intend to do with it.

(3) *Routine Uses:* A list of where and why the information will be disclosed outside DoD.

(4) *Disclosure:* Voluntary or Mandatory. (Use Mandatory only when disclosure is required by law and the individual will be penalized for not providing information.) Include any consequences of nondisclosure in nonthreatening language.

§806b.12 Requesting the Social Security Number.

When asking an individual for his or her Social Security Number, always give a Privacy Act Statement that tells the person: The legal authority for requesting it; the uses that will be made of the Social Security Number; and whether providing the Social Security Number is voluntary or mandatory. Do not deny anyone a legal right, benefit, or privilege for refusing to give their Social Security Number unless the law requires disclosure, or a law or regulation adopted before January 1, 1975 required the Social Security Number and the Air Force uses it to verify a person's identity in a system of records established before that date.

(a) The Air Force requests an individual's Social Security Number and provides the individual information required by law when anyone enters military service or becomes an Air Force civilian employee. The Air Force uses the Social Security Number as a service or employment number to reference the individual's official records. When you ask someone for a Social Security Number as identification to retrieve an existing record, you do not have to restate this information.

(b) Executive Order 9397, *Numbering System for Federal Accounts Relating to Individual Persons*[2], authorizes using the Social Security Number as a personal identifier. This order is not adequate authority to collect a Social Security Number to create a record. When law does not require disclosing the Social Security Number or when the system of records was created after January 1, 1975, you may ask for the Social Security Number, but the individual does not have to disclose it. If the individual refuses to respond, use alternative means of identifying records. (c) Social Security Numbers are personal and unique to each individual. Protect them as for official use only (FOUO).

Within DoD, do not disclose them to anyone without an official need to know. Outside DoD, they are not releasable without the person's consent,

[2] *http://resource.lawlinks.com/content/legal__research/Executive__Orders/1940–1960/executive__order__9397.htm.*

or unless authorized under one of the 12 exceptions to the Privacy Act (see § 806b.47).

Subpart D—Giving Access to Privacy Act Records

§ 806b.13 Making a Request for Access.

Persons or their designated representatives may ask for a copy of their records in a system of records. Requesters need not state why they want access to their records. Verify the identity of the requester to avoid unauthorized disclosures. How you verify identity will depend on the sensitivity of the requested records. Persons may use a notary or an unsworn declaration in the following format: "I declare under penalty of perjury (if outside the United States, add "under the laws of the United States of America") that the foregoing is true and correct. Executed on (date). (Signature)."

§ 806b.14 Processing a Request for Access.

Consider a request from an individual for his or her own records in a system of records under both the Freedom of Information Act and the Privacy Act regardless of the Act cited. The requester does not need to cite either Act if the records they want are contained in a system of records. Process the request under whichever Act gives the most information. When necessary, tell the requester which Act you used and why.

(a) Requesters should describe the records they want. They do not have to name a system of records number, but they should at least name a type of record or functional area. For requests that ask for "all records about me," ask for more information and tell the person how to review the Air Force systems of records published in the FEDERAL REGISTER or at *http://www.defenselink.mil/privacy/notices/usaf*.

(b) Requesters should not use government equipment, supplies, stationery, postage, telephones, or official mail channels for making Privacy Act requests. System managers will process such requests and tell requesters that using government resources to make Privacy Act requests is not authorized.

(c) Tell the requester if a record exists and how to review the record. If possible, respond to requests within 10 workdays of receipt. If you cannot answer the request in 10 workdays, send a letter explaining why and give an approximate completion date no more than 20 workdays after the first office received the request.

(d) Show or give a copy of the record to the requester within 30 workdays of receiving the request unless the system is exempt and the Air Force lists the exemption in appendix D to this part; or it is published in this section; or published as a final rule in the FEDERAL REGISTER. Give information in a form the requester can understand. If the system is exempt under the Privacy Act, provide any parts releasable under the Freedom of Information Act, with appeal rights (*See* subpart F of this part), citing appropriate exemptions from the Privacy Act and the Freedom of Information Act, if applicable.

(e) If the requester wants another person present during the record review, the system manager may ask for written consent to authorize discussing the record with another person present.

§ 806b.15 Fees.

Give the first 100 pages free, and charge only reproduction costs for the remainder. Copies cost $.15 per page; microfiche costs $.25 per fiche. Charge fees for all pages for subsequent requests for the same records. Do not charge fees:

(a) When the requester can get the record without charge under another publication (for example, medical records).

(b) For search.

(c) For reproducing a document for the convenience of the Air Force.

(d) For reproducing a record so the requester can review it.

Fee waivers. Waive fees automatically if the direct cost of reproduction is less than $15, unless the individual is seeking an obvious extension or duplication of a previous request for which he or she was granted a waiver. Decisions to waive or reduce fees that exceed $15 are made on a case-by-case basis.

§ 806b.16 Denying or limiting access.

System managers process access denials within 5 workdays after you receive a request for access. When you may not release a record, send a copy of the request, the record, and why you recommend denying access (include the applicable exemption) to the denial authority through the legal office and the Privacy Act office. Judge Advocate offices will include a written legal opinion. The Privacy Act officer reviews the file, and makes a recommendation to the denial authority. The denial authority sends the requester a letter with the decision. If the denial authority grants access, release the record. If the denial authority refuses access, tell the requester why and explain pertinent appeal rights (*see* subpart F of this part). Before you deny a request for access to a record, make sure that:

(a) The system has an exemption rule published in the FEDERAL REGISTER as a final rule.

(b) The exemption covers each document. (All parts of a system are not automatically exempt.)

(c) Nonexempt parts are segregated.

§ 806b.17 Special provision for certain medical records.

If a physician believes that disclosing requested medical records could harm the person's mental or physical health, you should:

(a) Ask the requester to get a letter from a physician to whom you can send the records. Include a letter explaining to the physician that giving the records directly to the individual could be harmful.

(b) Offer the services of a military physician other than one who provided treatment if naming the physician poses a hardship on the individual.

(c) The Privacy Act requires that we ultimately insure that the subject receives the records.

§ 806b.18 Third party information in a Privacy Act System of Record.

Ordinarily a person is entitled to their entire record under the Privacy Act. However, the law is not uniform regarding whether a subject is entitled to information that is not "about" him or her (for example, the home address of a third party contained in the subject's records). Consult your servicing Staff Judge Advocate before disclosing third party information. Generally, if the requester will be denied a right, privilege or benefit, the requester must be given access to relevant portions of the file.

§ 806b.19 Information compiled in anticipation of civil action.

Withhold records compiled in connection with a civil action or other proceeding including any action where the Air Force expects judicial or administrative adjudicatory proceedings. This exemption does not cover criminal actions. Do not release attorney work products prepared before, during, or after the action or proceeding.

§ 806b.20 Denial authorities.

These officials or a designee may deny access or amendment of records as authorized by the Privacy Act. Send a letter to Air Force Chief Information Officer/P with the position titles of designees. Authorities are:

(a) Deputy Chief of Staffs and chiefs of comparable offices or higher level at Secretary of the Air Force or Headquarters United States Air Force or designees.

(b) Major Command, Field Operating Agency, or direct reporting unit commanders or designees.

(c) Director, Personnel Force Management, 1040 Air Force Pentagon, Washington, DC 20330–1040 (for civilian personnel records).

(d) Commander, Air Force Office of Special Investigations, Washington, DC 20332–6001 (for Air Force Office of Special Investigations records).

(e) Unified Commanders or designees.

Subpart E—Amending the Record

§ 806b.21 Amendment reasons.

Individuals may ask to have their records amended to make them accurate, timely, relevant, or complete. System managers will routinely correct a record if the requester can show that it is factually wrong (*e.g.*, date of birth is wrong).

§ 806b.22 Responding to amendment requests.

(a) Anyone may request minor corrections orally. Requests for more serious modifications should be in writing.

(b) After verifying the identity of the requester, make the change, notify all known recipients of the record, and inform the individual.

(c) Acknowledge requests within 10 workdays of receipt. Give an expected completion date unless you complete the change within that time. Final decisions must take no longer than 30 workdays.

§ 806b.23 Approving or denying a record amendment.

The Air Force does not usually amend a record when the change is based on opinion, interpretation, or subjective official judgment. Determinations not to amend such records constitutes a denial, and requesters may appeal (*see* subpart F of this part).

(a) If the system manager decides not to amend the record, send a copy of the request, the record, and the recommended denial reasons to the denial authority through the legal office and the Privacy Act office. Legal offices will include a written legal opinion. The Privacy Act officer reviews the proposed denial and legal opinion and makes a recommendation to the denial authority.

(b) The denial authority sends the requester a letter with the decision. If the denial authority approves the request, amend the record and notify all previous recipients that it has been changed. If the authority denies the request, give the requester the statutory authority, reason, and pertinent appeal rights (see subpart F of this part).

§ 806b.24 Seeking review of unfavorable Agency determinations.

Requesters should pursue record corrections of subjective matters and opinions through proper channels to the Civilian Personnel Office using grievance procedures or the Air Force Board for Correction of Military Records. Record correction requests denied by the Air Force Board for Correction of Military Records are not subject to further consideration under this part. Military personnel, other than U.S. Air Force personnel, should pursue service-unique record corrections through their component chain of command.

§ 806b.25 Contents of Privacy Act case files.

Do not keep copies of disputed records in this file. File disputed records in their appropriate series. Use the file solely for statistics and to process requests. Do not use the case files to make any kind of determination about an individual. Document reasons for untimely responses. These files include:

(a) Requests from and replies to individuals on whether a system has records about them.

(b) Requests for access or amendment.

(c) Approvals, denials, appeals, and final review actions.

(d) Coordination actions and related papers.

Subpart F—Appeals

§ 806b.26 Appeal procedures.

Individuals who receive a denial to their access or amendment request may request a denial review by writing to the Secretary of the Air Force, through the denial authority, within 60 calendar days after receiving a denial letter. The denial authority promptly sends a complete appeal package to Air Force Legal Services Agency, General Litigation Division (JACL). The package must include:

(1) The original appeal letter;

(2) The initial request;

(3) The initial denial;

(4) A copy of the record;

(5) Any internal records or coordination actions relating to the denial;

(6) The denial authority's comments on the appellant's arguments; and

(7) The legal reviews.

(a) If the denial authority reverses an earlier denial and grants access or amendment, notify the requester immediately.

(b) Air Force Legal Services Agency, General Litigation Division (JACL) reviews the denial and provides a final recommendation to Secretary of the Air Force, Fiscal and Administrative Law Division (GCA). Secretary of the

Air Force, Fiscal and Administrative Law Division (GCA) tells the requester the final Air Force decision and explains judicial review rights.

(c) The requester may file a concise statement of disagreement with the system manager if Secretary of the Air Force, Fiscal and Administrative Law Division (GCA) denies the request to amend the record. Secretary of the Air Force, Fiscal and Administrative Law Division (GCA) explains the requester's rights when they issue the final appeal decision.

(d) The records should clearly show that a statement of disagreement is filed with the record or separately.

(e) The disputed part of the record must show that the requester filed a statement of disagreement.

(f) Give copies of the statement of disagreement to the record's previous recipients. Inform subsequent record users about the dispute and give them a copy of the statement with the record.

(g) The system manager may include a brief summary of the reasons for not amending the record. Limit the summary to the reasons Secretary of the Air Force, Fiscal and Administrative Law Division (GCA) gave to the individual. The summary is part of the individual's record, but it is not subject to amendment procedures.

Subpart G—Privacy Act Notifications

§ 806b.27 When to include a Privacy Act warning statement in publications.

Include a Privacy Act Warning Statement in each Air Force publication that requires collecting or keeping information in a system of records. Also include the Warning Statement when publications direct collection of the Social Security Number, or any part of the Social Security Number, from the individual. The warning statement will cite legal authority and when part of a record system, the Privacy Act system of records number and title. You can use the following warning statement: "This instruction requires collecting and maintaining information protected by the Privacy Act of 1974 authorized by (U.S.C. citation and or Executive Order number). System of records notice (number and title) applies."

§ 806b.28 Warning banners.

Information systems that contain information on individuals that is retrieved by name or personal identifier are subject to the Privacy Act. The Privacy Act requires these systems to have a Privacy Act system notice published in the FEDERAL REGISTER that covers the information collection before collection begins. In addition, all information systems subject to the Privacy Act will have warning banners displayed on the first screen (at a minimum) to assist in safeguarding the information. Use the following language for the banner: "PRIVACY ACT INFORMATION—The information accessed through this system is FOR OFFICIAL USE ONLY and must be protected in accordance with the Privacy Act and Air Force Instruction 33–332."

§ 806b.29 Sending personal information over electronic mail.

(a) Exercise caution before transmitting personal information over e-mail to ensure it is adequately safeguarded. Some information may be so sensitive and personal that e-mail may not be the proper way to transmit it. When sending personal information over e-mail within DoD, ensure: There is an official need; all addressee(s) (including "cc" addressees) are authorized to receive it under the Privacy Act; and it is protected from unauthorized disclosure, loss, or alteration. Protection methods may include encryption or password protecting the information in a separate Word document. When transmitting personal information over e-mail, add "FOUO" to the beginning of the subject line, followed by the subject, and apply the following statement at the beginning of the e-mail:

"This e-mail contains For Official Use Only (FOUO) information which must be protected under the Privacy Act and Air Force Instruction 33–332."

(b) Do not indiscriminately apply this statement to e-mails. Use it only in situations when you are actually transmitting personal information. DoD Regulation 5400.7/Air Force Supp,

Chapter 4[3], provides additional guidance regarding For Official Use Only information.

(c) Do not disclose personal information to anyone outside DoD unless specifically authorized by the Privacy Act (see § 806b.47).

(d) Do not send Privacy Act information to distribution lists or group e-mail addresses unless each member has an official need to know the personal information. When in doubt, send only to individual accounts.

(e) Before forwarding e-mails you have received that contain personal information, verify that your intended recipients are authorized to receive the information under the Privacy Act (see § 806b.47).

Subpart H—Privacy Impact Assessments

§ 806b.30 Evaluating information systems for Privacy Act compliance.

Information system owners and developers must address Privacy Act requirements in the development stage of the system and integrate privacy protections into the development life cycle of the information system. This is accomplished with a Privacy Impact Assessment.

(a) The Privacy Impact Assessment addresses what information is to be collected; why the information is being collected; the intended use of the information; with whom the information will be shared; what notice or opportunities for the individual to decline or consent to providing the information collected, and how that information is shared; secured; and whether a system of records is being created, or an existing system is being amended. The E-Government Act of 2002[4] requires Privacy Impact Assessments to be conducted before:

(1) Developing or procuring information technology systems or projects that collect, maintain, or disseminate information in identifiable form from or about members of the public.

(2) Initiating a new electronic collection of information in identifiable form for 10 or more persons excluding agencies, instrumentalities, or employees of the Federal Government.

(b) In general, Privacy Impact Assessments are required to be performed and updated as necessary where a system change creates new privacy risks.

(c) No Privacy Impact Assessment is required where information relates to internal government operations, has been previously assessed under an evaluation similar to a Privacy Impact Assessment, or where privacy issues are unchanged.

(d) The depth and content of the Privacy Impact Assessment should be appropriate for the nature of the information to be collected and the size and complexity of the information technology system.

(e) The system owner will conduct a Privacy Impact Assessment as outlined in appendix E to this part and send it to their Major Command Privacy Act office for review and final approval by the Major Command or Headquarters Air Force Functional Chief Information Officer. The Major Command or Headquarters Air Force Functional Chief Information Officer will send a copy of approved Privacy Impact Assessments to Air Force Chief Information Officer/P, 1155 Air Force Pentagon, Washington DC 20330–1155; or e-mail *af.foia@pentagon.af.mil*.

(f) Whenever practicable, approved Privacy Impact Assessments will be posted to the Freedom of Information Act/Privacy Act Web site for public access at *http://www.foia.af.mil* (this requirement will be waived for security reasons, or to protect classified, sensitive, or private information contained in an assessment).

Subpart I—Preparing and Publishing System Notices for the Federal Register

§ 806b.31 Publishing system notices.

The Air Force must publish notices in the FEDERAL REGISTER of new, changed, and deleted systems to inform the public of what records the Air Force keeps and give them an opportunity to comment before the system

[3] *http://www.dtic.mil/whs/directives/corres/pdf/54007r__0998/p54007r.pdf*.

[4] *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107__cong__public__laws&docid=f:publ347.107.pdf*.

is implemented or changed. The Privacy Act also requires submission of new or significantly changed systems to the Office of Management and Budget and both houses of Congress before publication in the FEDERAL REGISTER. This includes:

(a) Starting a new system.

(b) Instituting significant changes to an existing system.

(c) Sending out data collection forms or instructions.

(d) Issuing a request for proposal or invitation for bid to support a new system.

§ 806b.32 Submitting notices for publication in the Federal Register.

At least 120 days before implementing a new system, or a major change to an existing system, subject to this part, system managers must send a proposed notice, through the Major Command Privacy Office, to Air Force Chief Information Officer/P. Send notices electronically to *af.foia@pentagon.af.mil* using Microsoft Word, using the Track Changes tool in Word to indicate additions/changes to existing notices. Follow the format outlined in appendix B to this part. For new systems, system managers must include a statement that a risk assessment was accomplished and is available should the Office of Management and Budget request it.

§ 806b.33 Reviewing notices.

System managers will review and validate their Privacy Act system notices annually and submit changes to Air Force Chief Information Officer/P through the Major Command Privacy Office.

Subpart J—Protecting and Disposing of Records

§ 806b.34 Protecting records.

Maintaining information privacy is the responsibility of every federal employee, military member, and contractor who comes into contact with information in identifiable form. Protect information according to its sensitivity level. Consider the personal sensitivity of the information and the risk of disclosure, loss or alteration. Most information in systems of records is FOUO. Refer to DoD 5400.7–R/Air Force Supp, DoD Freedom of Information Act Program, for protection methods.

§ 806b.35 Balancing protection.

Balance additional protection against sensitivity, risk and cost. In some situations, a password may be enough protection for an automated system with a log-on protocol. Others may require more sophisticated security protection based on the sensitivity of the information. Classified computer systems or those with established audit and password systems are obviously less vulnerable than unprotected files. Follow Air Force Instruction 33–202, *Computer Security*,[5] for procedures on safeguarding personal information in automated records.

(a) AF Form 3227, Privacy Act Cover Sheet,[6] is optional and available for use with Privacy Act material. Use it to cover and protect personal information that you are using in office environments that are widely unprotected and accessible to many individuals. After use, such information should be protected as outlined in DoD 5400.7–R/Air Force Supp.

(b) Privacy Act Labels. Use of Air Force Visual Aid 33–276, Privacy Act Label, is optional to assist in protecting Privacy Act information on compact disks, diskettes, and tapes.

§ 806b.36 Disposing of records.

You may use the following methods to dispose of records protected by the Privacy Act and authorized for destruction according to records retention schedules:

(a) Destroy by any method that prevents compromise, such as tearing, burning, or shredding, so long as the personal data is not recognizable and beyond reconstruction.

(b) Degauss or overwrite magnetic tapes or other magnetic medium.

(c) Dispose of paper products through the Defense Reutilization and Marketing Office or through activities that manage a base-wide recycling program.

[5] *http://www.e-publishing.af.mil/pubfiles/af/33/afi33-202/afi33-202.pdf*.

[6] *http://www.e-publishing.af.mil/formfiles/af/af3227/af3227.xfd*.

The recycling sales contract must contain a clause requiring the contractor to safeguard privacy material until its destruction and to pulp, macerate, shred, or otherwise completely destroy the records. Originators must safeguard Privacy Act material until it is transferred to the recycling contractor. A Federal employee or, if authorized, a contractor employee must witness the destruction. This transfer does not require a disclosure accounting.

Subpart K—Privacy Act Exemptions

§ 806b.37 Exemption types.

There are two types of exemptions permitted by 5 U.S.C. 552a:

(a) A *General exemption* authorizes the exemption of a system of records from most parts of the Privacy Act.

(b) A *Specific exemption* authorizes the exemption of a system of records from only a few parts.

§ 806b.38 Authorizing exemptions.

Denial authorities may withhold records using Privacy Act exemptions only when an exemption for the system of records has been published in the FEDERAL REGISTER as a final rule. Appendix D lists the systems of records that have published exemptions with rationale.

§ 806b.39 Requesting an exemption.

A system manager who believes that a system needs an exemption from some or all of the requirements of the Privacy Act will send a request to Air Force Chief Information Officer/P through the Major Command or Field Operating Agency Privacy Act Officer. The request will detail the reasons for the exemption, the section of the Act that allows the exemption, and the specific subsections of the Privacy Act from which the system is to be exempted, with justification for each subsection.

§ 806b.40 Exemptions.

Exemptions permissible under 5 U.S.C. 552a (subject to § 806b.38 of this part):

(a) *The (j)(2) exemption*. Applies to investigative records created and maintained by law-enforcement activities whose principal function is criminal law enforcement.

(b) *The (k)(1) exemption*. Applies to information specifically authorized to be classified under the DoD Information Security Program Regulation, 32 CFR part 159.

(c) *The (k)(2) exemption*. Applies to investigatory information compiled for law-enforcement purposes by nonlaw enforcement activities and which is not within the scope of Sec. 806b.40(a) of this part. However, the Air Force must allow an individual access to any record that is used to deny rights, privileges or benefits to which he or she would otherwise be entitled by Federal law or for which he or she would otherwise be eligible as a result of the maintenance of the information (unless doing so would reveal a confidential source).

(d) *The (k)(3) exemption*. Applies to records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506.

(e) *The (k)(4) exemption*. Applies to records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8.

(f) *The (k)(5) exemption*. Applies to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information, but only to the extent such material would reveal the identity of a confidential source. This provision allows protection of confidential sources used in background investigations, employment inquiries, and similar inquiries that are for personnel screening to determine suitability, eligibility, or qualifications.

(g) *The (k)(6) exemption*. Applies to testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal or military service, if the disclosure would compromise the objectivity or fairness of the test or examination process.

(h) *The (k)(7) exemption*. Applies to evaluation material used to determine potential for promotion in the Military Services, but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

Subpart L—Disclosing Records to Third Parties

§ 806b.41 Disclosure considerations.

The Privacy Act requires the written consent of the subject before releasing personal information to third parties, unless one of the 12 exceptions of the Privacy Act applies (see § 806b.47). Use this checklist before releasing personal information to third parties: Make sure it is authorized under the Privacy Act; consider the consequences; and check the accuracy of the information. You can release personal information to third parties when the subject agrees in writing. Air Force members consent to releasing their home telephone number and address when they sign and check the "Do Consent" block on the AF Form 624, Base/Unit Locator and Postal Service Center Directory[7](see Air Force Instruction 33–329, *Base and Unit Personnel Locators*[8]).

§ 806b.42 Social rosters.

Before including personal information such as spouses names, home addresses, home phones, and similar information on social rosters or directories that are shared with groups of individuals, ask for signed consent statements. Otherwise, do not include the information. Consent statements must give the individual a choice to consent or not consent, and clearly tell the individual what information is being solicited, the purpose, to whom you plan to disclose the information, and that consent is voluntary. Maintain the signed statements until no longer needed.

[7] *http://www.e-publishing.af.mil/formfiles/af/af624/af624.xfd*

[8] *http://www.e-publishing.af.mil/pubfiles/af/33/afi33-329/afi33-329.pdf*.

§ 806b.43 Placing personal information on shared drives.

Personal information should never be placed on shared drives for access by groups of individuals unless each person has an official need to know the information to perform their job. Add appropriate access controls to ensure access by only authorized individuals. Recall rosters are FOUO because they contain personal information and should be shared with small groups at the lowest levels for official purposes to reduce the number of people with access to such personal information. Commanders and supervisors should give consideration to those individuals with unlisted phone numbers, who do not want their number included on the office recall roster. In those instances, disclosure to the Commander or immediate supervisor, or deputy, should normally be sufficient.

§ 806b.44 Personal information that requires protection.

Following are some examples of information that is not releasable without the written consent of the subject. This list is not all-inclusive.

(a) Marital status (single, divorced, widowed, separated).

(b) Number, name, and sex of dependents.

(c) Civilian educational degrees and major areas of study (unless the request for the information relates to the professional qualifications for Federal employment).

(d) School and year of graduation.

(e) Home of record.

(f) Home address and phone.

(g) Age and date of birth (year).

(h) Present or future assignments for overseas or for routinely deployable or sensitive units.

(i) Office and unit address and duty phone for overseas or for routinely deployable or sensitive units.

(j) Race/ethnic origin.

(k) Educational level (unless the request for the information relates to the professional qualifications for Federal employment).

(l) Social Security Number.

§ 806b.45 Releasable information.

Following are examples of information normally releasable to the public

without the written consent of the subject. This list is not all-inclusive.

(a) Name.

(b) Rank.

(c) Grade.

(d) Air Force specialty code.

(e) Pay (including base pay, special pay, all allowances except Basic Allowance for Quarters and Variable Housing Allowance).

(f) Gross salary for civilians.

(g) Past duty assignments, unless sensitive or classified.

(h) Present and future approved and announced stateside assignments.

(i) Position title.

(j) Office, unit address, and duty phone number (Continental United States (CONUS) only).

(k) Date of rank.

(l) Entered on active duty date.

(m) Pay date.

(n) Source of commission.

(o) Professional military education.

(p) Promotion sequence number.

(q) Military awards and decorations.

(r) Duty status of active, retired, or reserve.

(s) Active duty official attendance at technical, scientific, or professional meetings.

(t) Biographies and photos of key personnel.

(u) Date of retirement, separation.

§ 806b.46 Disclosing other information.

Use these guidelines to decide whether to release information:

(a) Would the subject have a reasonable expectation of privacy in the information requested?

(b) Would disclosing the information benefit the general public? The Air Force considers information as meeting the public interest standard if it reveals anything regarding the operations or activities of the agency, or performance of its statutory duties.

(c) Balance the public interest against the individual's probable loss of privacy. Do *not* consider the requester's purpose, circumstances, or proposed use.

§ 806b.47 Rules for releasing Privacy Act information without consent of the subject.

The Privacy Act prohibits disclosing personal information to anyone other than the subject of the record without his or her written consent. There are twelve exceptions to the "no disclosure without consent" rule. Those exceptions permit release of personal information without the individual's consent only in the following instances:

(a) *Exception 1.* DoD employees who have a need to know the information in the performance of their official duties.

(b) *Exception 2.* In response to a Freedom of Information Act request for information contained in a system of records about an individual and the Freedom of Information Act requires release of the information.

(c) *Exception 3.* To agencies outside DoD only for a Routine Use published in the FEDERAL REGISTER. The purpose of the disclosure must be compatible with the intended purpose of collecting and maintaining the record. When initially collecting the information from the subject, the Routine Uses block in the Privacy Act Statement must name the agencies and reason.

NOTE TO PARAGRAPH (c): In addition to the Routine Uses established by the Department of the Air Force within each system of records, the DoD has established "Blanket Routine Uses" that apply to all record systems maintained by the Department of the Air Force. These "Blanket Routine Uses" have been published only once at the beginning of the Department of the Air Force's FEDERAL REGISTER compilation of record systems notices in the interest of simplicity, economy and to avoid redundancy. Unless a system notice specifically excludes a system of records from a "Blanket Routine Use," all "Blanket Routine Uses" apply to that system (see appendix C to this part).

(d) *Exception 4.* The Bureau of the Census to plan or carry out a census or survey under Title 13, U.S.C. Section 8.

(e) *Exception 5.* A recipient for statistical research or reporting. The recipient must give advanced written assurance that the information is for statistical purposes only. NOTE: No one may use any part of the record to decide on individuals' rights, benefits, or entitlements. You must release records in a format that makes it impossible to identify the real subjects.

(f) *Exception 6.* The National Archives and Records Administration to evaluate records for permanent retention. Records stored in Federal Records Centers remain under Air Force control.

(g) *Exception 7.* A Federal, State, or local agency (other than DoD) for civil or criminal law enforcement. The head of the agency or a designee must send a written request to the system manager specifying the record or part needed and the law enforcement purpose. In addition, the "blanket routine use" for law enforcement allows the system manager to disclose a record to a law enforcement agency if the agency suspects a criminal violation.

(h) *Exception 8.* An individual or agency that needs the information for compelling health or safety reasons. The affected individual need not be the record subject.

(i) *Exception 9.* Either House of Congress, a congressional committee, or a subcommittee, for matters within their jurisdictions. The request must come from the committee chairman or ranking minority member (see Air Force Instruction 90–401, Air Force Relations With Congress).[9]

(1) Requests from a Congressional member acting on behalf of the record subject are evaluated under the routine use of the applicable system notice. If the material for release is sensitive, get a release statement.

(2) Requests from a Congressional member not on behalf of a committee or the record subject are properly analyzed under the Freedom of Information Act, and not under the Privacy Act.

(j) *Exception 10.* The Comptroller General or an authorized representative of the General Accounting Office (GAO) to conduct official GAO business.

(k) *Exception 11.* A court of competent jurisdiction, with a court order signed by a judge.

(l) *Exception 12.* A consumer reporting agency in accordance with 31 U.S.C. 3711(e). Ensure category element is represented within the system of records notice.

§ 806b.48 Disclosing the medical records of minors.

Air Force personnel may disclose the medical records of minors to their parents or legal guardians in conjunction with applicable Federal laws and guidelines. The laws of each state define the age of majority.

(a) The Air Force must obey state laws protecting medical records of drug or alcohol abuse treatment, abortion, and birth control. If you manage medical records, learn the local laws and coordinate proposed local policies with the servicing Staff Judge Advocate.

(b) Outside the United States (overseas), the age of majority is 18. Unless parents or guardians have a court order granting access or the minor's written consent, they will not have access to minor's medical records overseas when the minor sought or consented to treatment between the ages of 15 and 17 in a program where regulation or statute provides confidentiality of records and he or she asked for confidentiality.

§ 806b.49 Disclosure accountings.

System managers must keep an accurate record of all disclosures made from any system of records except disclosures to DoD personnel for official use or disclosures under the Freedom of Information Act. System managers may use Air Force Form 771[10], Accounting of Disclosures. Retain disclosure accountings for 5 years after the disclosure, or for the life of the record, whichever is longer.

(a) System managers may file the accounting record any way they want as long as they give it to the subject on request, send corrected or disputed information to previous record recipients, explain any disclosures, and provide an audit trail for reviews. Include in each accounting:

(1) Release date.

(2) Description of information.

(3) Reason for release.

(4) Name and address of recipient.

(5) Some exempt systems let you withhold the accounting record from the subject.

(b) You may withhold information about disclosure accountings for law enforcement purposes at the law enforcement agency's request.

§ 806b.50 Computer matching.

Computer matching programs electronically compare records from two or

[9] *http://www.e-publishing.af.mil/pubfiles/af/90/afi90-401/afi90-401.pdf.*

[10] *http://www.e-publishing.af.mil/formfiles/af/af771/af771.xfd.*

more automated systems that may include DoD, another Federal agency, or a state or other local government. A system manager proposing a match that could result in an adverse action against a Federal employee must meet these requirements of the Privacy Act:

(1) Prepare a written agreement between participants;

(2) Secure approval of the Defense Data Integrity Board;

(3) Publish a matching notice in the FEDERAL REGISTER before matching begins;

(4) Ensure full investigation and due process; and

(5) Act on the information, as necessary.

(a) The Privacy Act applies to matching programs that use records from: Federal personnel or payroll systems and Federal benefit programs where matching:

(1) Determines Federal benefit eligibility;

(2) Checks on compliance with benefit program requirements;

(3) Recovers improper payments or delinquent debts from current or former beneficiaries.

(b) Matches used for statistics, pilot programs, law enforcement, tax administration, routine administration, background checks and foreign counterintelligence, and internal matching that won't cause any adverse action are exempt from Privacy Act matching requirements.

(c) Any activity that expects to participate in a matching program must contact Air Force Chief Information Officer/P immediately. System managers must prepare a notice for publication in the FEDERAL REGISTER with a Routine Use that allows disclosing the information for use in a matching program. Send the proposed system notice to Air Force Chief Information Officer/P. Allow 180 days for processing requests for a new matching program.

(d) Record subjects must receive prior notice of a match. The best way to do this is to include notice in the Privacy Act Statement on forms used in applying for benefits. Coordinate computer matching statements on forms with Air Force Chief Information Officer/P through the Major Command Privacy Act Officer.

§ 806b.51 Privacy and the Web.

Do not post personal information on publicly accessible DoD web sites unless clearly authorized by law and implementing regulation and policy. Additionally, do not post personal information on .mil private web sites unless authorized by the local commander, for official purposes, and an appropriate risk assessment is performed. *See* Air Force Instruction 33–129 *Transmission of Information Via the Internet.*[11]

(a) Ensure public Web sites comply with privacy policies regarding restrictions on persistent and third party cookies, and add appropriate privacy and security notices at major web site entry points and Privacy Act statements or Privacy Advisories when collecting personal information. Notices must clearly explain where the collection or sharing of certain information is voluntary, and notify users how to provide consent.

(b) Include a Privacy Act Statement on the web page if it collects information directly from an individual that we maintain and retrieve by his or her name or personal identifier (*i.e.,* Social Security Number). We may only maintain such information in approved Privacy Act systems of records that are published in the FEDERAL REGISTER. Inform the visitor when the information is maintained and retrieved by name or personal identifier in a system of records; that the Privacy Act gives them certain rights with respect to the government's maintenance and use of information collected about them, and provide a link to the Air Force Privacy Act policy and system notices at *http://www.foia.af.mil.*

(c) Anytime a web site solicits personally-identifying information, even when not maintained in a Privacy Act system of records, it requires a Privacy Advisory. The Privacy Advisory informs the individual why the information is solicited and how it will be used. Post the Privacy Advisory to the web page where the information is being solicited, or through a well-marked hyperlink "Privacy Advisory—

[11] *http://www.e-publishing.af.mil/pubfiles/af/33/afi33-129/afi33-129.pdf.*

Please refer to the Privacy and Security Notice that describes why this information is collected and how it will be used."

Subpart M—Training

§ 806b.52 Who needs training.

The Privacy Act requires training for all persons involved in the design, development, operation and maintenance of any system of records. More specialized training is needed for personnel who may be expected to deal with the news media or the public, personnel specialists, finance officers, information managers, supervisors, and individuals working with medical and security records. Commanders will ensure that above personnel are trained annually in the principles and requirements of the Privacy Act.

§ 806b.53 Training tools.

Helpful resources include:

(a) The Air Force Freedom of Information Act Web page which includes a Privacy Overview, Privacy Act training slides, the Air Force systems of records notices, and links to the Defense Privacy Board Advisory Opinions, the DoD and Department of Justice Privacy web pages. Go to *http://www.foia.af.mil*. Click on "Resources."

(b) "The Privacy Act of 1974," a 32-minute film developed by the Defense Privacy Office. Contact the Joint Visual Information Activity at DSN 795–6543/7283 or commercial (717) 895–6543/7283, and ask for #504432 "The Privacy Act of 1974."

(c) A Manager's Overview, What You Need to Know About the Privacy Act. This overview gives you Privacy Act 101 and is available on-line at *http://www.foia.af.mil*.

(d) Training slides for use by the Major Command and base Privacy Act officers, available from the Freedom of Information Act web page at *http://www.foia.af.mil*, under "Resources."

NOTE: Formal school training groups that develop or modify blocks of instruction must send the material to Air Force Chief Information Officer/P for coordination.

§ 806b.54 Information collections, records, and forms or information management tools (IMT).

(a) Information Collections. No information collections are required by this publication.

(b) Records. Retain and dispose of Privacy Act records according to Air Force Manual 37–139, Records Disposition Schedule.[12]

(c) Forms or Information Management Tools (Adopted and Prescribed).

(1) Adopted Forms or Information Management Tools. Air Force Form 624, Base/Unit Locator and PSC Directory, and AF Form 847, Recommendation for Change of Publication.

(2) Prescribed Forms or Information Management Tools. AF Form 3227, Privacy Act Cover Sheet, Air Force Form 771, Accounting of Disclosures, and Air Force Visual Aid 33–276.

APPENDIX A TO PART 806b—DEFINITIONS

Access: Allowing individuals to review or receive copies of their records.

Amendment: The process of adding, deleting, or changing information in a system of records to make the data accurate, relevant, timely, or complete.

Computer matching: A computerized comparison of two or more automated systems of records or a system of records with non-Federal records to establish or verify eligibility for payments under Federal benefit programs or to recover delinquent debts for these programs.

Confidential source: A person or organization giving information under an express or implied promise of confidentiality made before September 27, 1975.

Confidentiality: An expressed and recorded promise to withhold the identity of a source or the information provided by a source. The Air Force promises confidentiality only when the information goes into a system with an approved exemption for protecting the identity of confidential sources.

Cookie: Data created by a Web server that is stored on a user's computer either temporarily for that session only or permanently on the hard disk (persistent cookie). It provides a way for the Web site to identify users and keep track of their preferences. It is commonly used to "maintain the state" of the session. A third-party cookie either originates on or is sent to a Web site different from the one you are currently viewing.

[12] *http://www.e-publishing.af.mil/pubfiles/af/37/afman37-139/afman37-139.pdf*.

Defense Data Integrity Board: Composed of representatives from DoD components and the services who oversee, coordinate, and approve all DoD computer matching programs covered by the Act.

Denial Authority: The individuals with authority to deny requests for access or amendment of records under the Privacy Act.

Disclosure: Giving information from a system, by any means, to anyone other than the record subject.

Federal benefit program: A Federally funded or administered program for individuals that provides cash or in-kind assistance (payments, grants, loans, or loan guarantees).

Individual: A living U.S. citizen or a permanent resident alien.

Minor: Anyone under the age of majority according to local state law. If there is no applicable state law, a minor is anyone under age 18. Military members and married persons are not minors, no matter what their chronological age.

Personal identifier: A name, number, or symbol that is unique to an individual, usually the person's name or Social Security Number.

Personal information: Information about an individual other than items of public record.

Privacy Act request: An oral or written request by an individual about his or her records in a system of records.

Privacy advisory: A statement required when soliciting personally-identifying information by an Air Force web site and the information is not maintained in a system of records. The Privacy Advisory informs the individual why the information is being solicited and how it will be used.

Privacy Impact Assessment: A written assessment of an information system that addresses the information to be collected, the purpose and intended use; with whom the information will be shared; notice or opportunities for consent to individuals; how the information will be secured; and whether a new system of records is being created under the Privacy Act.

Record: Any information about an individual.

Routine use: A disclosure of records to individuals or agencies outside DoD for a use that is compatible with the purpose for which the Air Force created the records.

System manager: The official who is responsible for managing a system of records, including policies and procedures to operate and safeguard it. Local system managers operate record systems or are responsible for part of a decentralized system.

System of records: A group of records retrieved by the individual's name, personal identifier; or individual identifier through a cross-reference system.

System notice: The official public notice published in the FEDERAL REGISTER of the existence and content of the system of records.

APPENDIX B TO PART 806b—PREPARING A SYSTEM NOTICE

The following elements comprise a system of records notice for publication in the FEDERAL REGISTER:

System identifier: Air Force Chief Information Officer/P assigns the notice number, for example, F033 AF PC A, where "F" indicates "Air Force," the next number represents the publication series number related to the subject matter, and the final letter group shows the system manager's command or Deputy Chief of Staff. The last character "A" indicates that this is the first notice for this series and system manager.

System name: Use a short, specific, plain-language title that identifies the system's general purpose (limited to 55 characters).

System location: Specify the address of the primary system and any decentralized elements, including automated data systems with a central computer facility and input or output terminals at separate locations. Use street address, 2-letter state abbreviations and 9-digit ZIP Codes. Spell out office names. Do not use office symbols.

Categories of individuals covered by the system: Use nontechnical, specific categories of individuals about whom the Air Force keeps records. Do not use categories like "all Air Force personnel" unless they are actually true.

Categories of records in the system: Describe in clear, plain language, all categories of records in the system. List only documents actually kept in the system. Do not show source documents that are used to collect data and then destroyed. Do not list form numbers.

Authority for maintenance of the system: Cite the specific law or Executive Order that authorizes the program the records support. Cite the DoD directive/instruction or Air Force instruction(s) that authorizes the system of records. Always include titles with the citations.

NOTE: Executive Order 9397 authorizes using the Social Security Number as a personal identifier. Include this authority whenever the Social Security Number is used to retrieve records.

Purpose: Describe briefly and specifically what the Air Force does with the information collected.

Routine uses of records maintained in the system including categories of users and the purpose of such uses: List each specific agency or activity outside DoD to whom the records may be released and the purpose for such release.

The DoD 'Blanket Routine Uses' published in the Air Force Directory of System Notices

apply to all system notices unless you indicate otherwise.

Polices and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: State the medium in which the Air Force keeps the records; for example, in file folders, card files, microfiche, computer, or a combination of those methods. Storage does not refer to the storage container.

Retrievability: State how the Air Force retrieves the records; for example, by name, Social Security Number, or personal characteristics (such as fingerprints or voiceprints).

Safeguards: List the kinds of officials who have immediate access to the system. List those responsible for safeguarding the records. Identify the system safeguards; for example, storage in safes, vaults, locked cabinets or rooms, use of guards, visitor controls, personnel screening, computer systems software, and so on. Describe safeguards fully without compromising system security.

Retention and disposal: State how long Air Force Manual 37–139 requires the activity to maintain the record. Indicate when or if the records may be transferred to a Federal Records Center and how long the record stays there. Specify when the Records Center sends the record to the National Archives or destroys it. Indicate how the records may be destroyed.

System manager(s) and address: List the position title and duty address of the system manager. For decentralized systems, show the locations and the position or duty title of each category of officials responsible for any segment of the system.

Notification procedure: List the title and duty address of the official authorized to tell requesters if their records are in the system. Specify the information a requester must submit; for example, full name, military status, Social Security Number, date of birth, or proof of identity, and so on.

Record access procedures: Explain how individuals may arrange to access their records. Include the titles or categories of officials who may assist; for example, the system manager.

Contesting records procedures: Air Force Chief Information Officer/P provides this standard caption.

Record source categories: Show categories of individuals or other information sources for the system.

Exemptions claimed for the system: When a system has no approved exemption, write "none" under this heading. Specifically list any approved exemption including the subsection in the Act.

APPENDIX C TO PART 806b—DOD 'BLANKET ROUTINE USES'

Certain DoD "blanket routine uses" have been established that are applicable to every record system maintained by the Department of the Air Force, unless specifically stated otherwise within the particular record system notice. These additional routine uses of the records are published only once in the Air Force's Preamble to its compilation of records systems in the interest of simplicity, economy and to avoid redundancy.

a. Law Enforcement Routine Use

If a system of records maintained by a DoD Component to carry out its functions indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or by regulation, rule, or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the agency concerned, whether federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

b. Disclosure when Requesting Information Routine Use

A record from a system of records maintained by a Component may be disclosed as a routine use to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a Component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

c. Disclosure of Requested Information Routine Use

A record from a system of records maintained by a Component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

d. Congressional Inquiries Routine Use

Disclosure from a system of records maintained by a Component may be made to a congressional office from the record of an individual in response to an inquiry from the

congressional office made at the request of that individual.

e. Private Relief Legislation Routine Use

Relevant information contained in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in Office of Management and Budget Circular A–19 (reference (u)) at any stage of the legislative coordination and clearance process as set forth in that Circular.

f. Disclosures Required by International Agreements Routine Use

A record from a system of records maintained by a Component may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of DoD military and civilian personnel.

g. Disclosure to State and Local Taxing Authorities Routine Use

Any information normally contained in Internal Revenue Service (IRS) Form W-2 which is maintained in a record from a system of records maintained by a Component may be disclosed to state and local taxing authorities with which the Secretary of the Treasury has entered into agreements under 5 U.S.C., sections 5516, 5517, and 5520 (reference (v)) and only to those state and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use is in accordance with Treasury Fiscal Requirements Manual Bulletin No. 76–07.

h. Disclosure to the Office of Personnel Management Routine Use

A record from a system of records subject to the Privacy Act and maintained by a Component may be disclosed to the Office of Personnel Management (OPM) concerning information on pay and leave, benefits, retirement deduction, and any other information necessary for the OPM to carry out its legally authorized government-wide personnel management functions and studies.

i. Disclosure to the Department of Justice for Litigation Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to any component of the Department of Justice for the purpose of representing the Department of Defense, or any officer, employee or member of the Department in pending or potential litigation to which the record is pertinent.

j. Disclosure to Military Banking Facilities Overseas Routine Use

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged, or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

k. Disclosure of Information to the General Services Administration (GSA) Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to the General Services Administration (GSA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

l. Disclosure of Information to the National Archives and Records Administration (NARA) Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to the National Archives and Records Administration (NARA) for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

m. Disclosure to the Merit Systems Protection Board Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use to the Merit Systems Protection Board, including the Office of the Special Counsel for the purpose of litigation, including administrative proceedings, appeals, special studies of the civil service and other merit systems, review of OPM or component rules and regulations, investigation of alleged or possible prohibited personnel practices; including administrative proceedings involving any individual subject of a DoD investigation, and such other functions, promulgated in 5 U.S.C. 1205 and 1206, or as may be authorized by law.

n. Counterintelligence Purpose Routine Use

A record from a system of records maintained by this component may be disclosed as a routine use outside the DoD or the U.S.

Government for the purpose of counterintelligence activities authorized by U.S. Law or Executive Order or for the purpose of enforcing laws, which protect the national security of the United States.

APPENDIX D TO PART 806b—GENERAL AND SPECIFIC EXEMPTIONS

(a) All systems of records maintained by the Department of the Air Force shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and that is required by Executive Order to be kept classified in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein, which contain isolated items of properly classified information.

(b) An individual is not entitled to have access to any information compiled in reasonable anticipation of a civil action or proceeding (5 U.S.C. 552a(d)(5)).

(c) No system of records within Department of the Air Force shall be considered exempt under subsection (j) or (k) of the Privacy Act until the exemption rule for the system of records has been published as a final rule in the FEDERAL REGISTER.

(d) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Air Force will grant access to non-exempt material in the records being maintained. Disclosure will be governed by the Department of the Air Force's Privacy Instruction, but will be limited to the extent that identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

(e) General Exemptions. The following systems of records claim an exemption under 5 U.S.C. 552a(j)(2), with the exception of F090 AF IG B, Inspector General Records and F051 AF JA F, Courts-Martial and Article 15 Records. They claim both the (j)(2) and (k)(2) exemption, and are listed under this part:

(1) System identifier and name: F071 AF OSI A, Counter Intelligence Operations and Collection Records.

(2) System identifier and name: F071 AF OSI C, Criminal Records.

(3) System identifier and name: F071 AF OSI D, Investigative Support Records.

(4) System identifier and name: F031 AF SP E, Security Forces Management Information System (SFMIS).

(i) Exemption: Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from the following subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), and (I), (e)(5), (e)(8), (f), and (g).

(ii) Authority: 5 U.S.C. 552a(j)(2).

(iii) Reasons: (A) To protect ongoing investigations and to protect from access criminal investigation information contained in this record system, so as not to jeopardize any subsequent judicial or administrative process taken as a result of information contained in the file.

(B) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(C) From subsection (c)(4) because an exemption is being claimed for subsection this subsection will not be applicable.

(D) From subsection (d) because access the records contained in this system would inform the subject of an investigation of existence of that investigation, provide subject of the investigation with information that might enable him to avoid detection, and would present a serious impediment to law enforcement.

(E) From subsection (e)(4)(H) because system of records is exempt from individual access pursuant to subsection (j) of the Privacy Act of 1974.

(F) From subsection (f) because this system of records has been exempted from access provisions of subsection (d).

(5) System identifier and name: F031 AF SF A, Correction and Rehabilitation Records.

(i) Exemption: Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from the following subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(3), (e)(4)(G), (H) and (I), (e)(5), (e)(8), (f), and (g).

(ii) Authority: 5 U.S.C. 552a(j)(2).

(iii) Reasons: (A) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), this subsection will not be applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(E) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsections (j)(2) of the Privacy Act of 1974.

(F) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(G) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(H) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(I) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(J) From subsection (g) because this system of records compiled for law enforcement purposes and has been exempted from the access provisions of subsections (d) and (f).

(6) System identifier and name: F090 AF IG B, Inspector General Records.

(i) Exemption: (A) Parts of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from the following subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g).

(B) Investigative material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. Note: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(ii) Authority: 5 U.S.C. 552a(j)(2) and (k)(2).

(iii) Reasons: (A) From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede the Air Force IG's criminal law enforcement.

(B) From subsection (c)(4) and (d), because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the ongoing investigation, reveal investigative techniques, and place confidential informants in jeopardy.

(C) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information

may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity that may relate to the jurisdiction of other cooperating agencies.

(D) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal and/or civil investigation.

(E) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal and/or civil investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(F) From subsections (e)(4)(G), (H), and (I) because this system of records is exempt from the access provisions of subsection (d) and (f).

(G) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(H) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(I) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an ongoing investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(J) From subsection (g) because this system of records should be exempt to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

(7) System identifier and name: F051 AF JA F, Courts-Martial and Article 15 Records.

(i) Exemptions: (A) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from the following subsection of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H) and (I), (e)(5), (e)(8), (f), and (g).

(B) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(ii) Authority: 5 U.S.C. 552a(j)(2) and (k)(2).

(iii) Reason: (A) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), his subsection will not be applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(1) because in the course of criminal investigations information is often obtained concerning the violation of laws or civil obligations of others not relating to an active case or matter. In the interests of effective law enforcement, it is necessary that this information be retained since it can aid in establishing patterns of activity and provide valuable leads for other agencies and future cases that may be brought.

(E) From subsection (e)(2) because in a criminal investigation the requirement that information be collected to the greatest extent possible from the subject individual would present a serious impediment to law

enforcement in that the subject of the investigation would be placed on notice of the existence of the investigation and would therefore be able to avoid detection.

(F) From subsection (e)(3) because the requirement that individuals supplying information be provided with a form stating the requirements of subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(G) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsections (j) and (k) of the Privacy Act of 1974.

(H) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(I) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(J) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(K) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(L) From subsection (g) because this system of records is compiled for law enforcement purposes and has been exempted from the access provisions of subsections (d) and (f).

(8) System identifier and name: F071 JTF A, Computer Network Crime Case System.

(i) Exemption: (A) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principle function any activity pertaining to the enforcement of criminal laws. Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(j)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g).

(B) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source.

NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

(ii) Authority: 5 U.S.C. 552a(j)(2) and (k)(2).

(iii) Reasons: (A) From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede criminal law enforcement.

(B) From subsection (c)(4) and (d), because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the ongoing investigation, reveal investigative techniques, and place confidential informants in jeopardy.

(C) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity that may relate to the jurisdiction of other cooperating agencies.

(D) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal and/or civil investigation.

(E) From subsection (e)(3) because supplying an individual with a form containing

a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal and/or civil investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(F) From subsections (e)(4)(G), (H), and (I) because this system of records is exempt from the access provisions of subsection (d).

(G) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(H) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(I) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(J) From subsection (g) because this system of records should be exempt to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

(f) Specific Exemptions. The following systems of records are subject to the specific exemptions shown:

(1) System identifier and name: F036 USAFA K, Admissions Records.

(i) Exemption: Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identify of a confidential source. Therefore, portions of this system of records (Liaison Officer Evaluation and Selection Panel Candidate Evaluation) may be exempt pursuant to 5 U.S.C. 552a(k)(7) from the following subsections of 5 U.S.C. 552a(d), (e)(4)(H), and (f).

(ii) Authority: 5 U.S.C. 552a(k)(7).

(iii) Reasons: To ensure the frankness of information used to determine whether cadets are qualified for graduation and commissioning as officers in the Air Force.

(2) System identifier and name: F036 AFPC N, Air Force Personnel Test 851, Test Answer Sheets.

(i) Exemption: Testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal or military service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(6) from the following subsections of 5 U.S.C. 552a(c)(3); (d); (e)(4)(G), (H), and (I); and (f).

(ii) Authority: 5 U.S.C. 552a(k)(6).

(iii) Reasons: To protect the objectivity of the promotion testing system by keeping the test questions and answers in confidence.

(3) System identifier and name: F036 USAFA A, Cadet Personnel Management System.

(i) Exemption: Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identify of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(7) from the following subsections of 5 U.S.C. 552a(d), (e)(4)(H), and (f).

(ii) Authority: 5 U.S.C. 552a(k)(7).

(iii) Reasons: To maintain the candor and integrity of comments needed to evaluate an Air Force Academy cadet for commissioning in the Air Force.

(4) System identifier and name: F036 AETC I, Cadet Records.

(i) Exemption: Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(5) (Detachment Professional Officer Course Selection Rating Sheets; Air Force Reserve Officer Training Corps Form 0–24—Disenrollment Review; Memoranda for Record and Staff Papers with Staff Advice, Opinions, or Suggestions) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(4)(G) and (H), and (f).

(ii) Authority: 5 U.S.C. 552a(k)(5).

(iii) Reasons: To protect the identity of a confidential source who furnishes information necessary to make determinations about the qualifications, eligibility, and

suitability of cadets for graduation and commissioning in the Air Force.

(5) System identifier and name: F044 AF SG Q, Family Advocacy Program Records.

(i) Exemption: (A) Investigative material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) Investigative material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and (k)(5) from the following subsections of 5 U.S.C. 552a(c)(3) and (d).

(ii) Authority: 5 U.S.C. 552a(k)(2) and (k)(5).

(iii) Reasons: From subsections (c)(3) and (d) because the exemption is needed to encourage those who know of exceptional medical or educational conditions or family maltreatments to come forward by protecting their identities and to protect such sources from embarrassment or recriminations, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accounting, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders or alleged offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children. Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment and Federal contracts, and that was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(6) System identifier and name: F036 AF PC A, Effectiveness/Performance Reporting System.

(i) Exemption: Evaluation material used to determine potential for promotion in the Military Services (Brigadier General Selectee Effectiveness Reports and Colonel and Lieutenant Colonel Promotion Recommendations with close out dates on or before January 31, 1991) may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(7) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(4)(H), and (f).

(ii) Authority: 5 U.S.C. 552a(k)(7).

(iii) Reasons: (A) From subsection (c)(3) because making the disclosure accounting available to the individual may compromise express promises of confidentiality by revealing details about the report and identify other record sources, which may result in circumvention of the access exemption.

(B) From subsection (d) because individual disclosure compromises express promises of confidentiality conferred to protect the integrity of the promotion rating system.

(C) From subsection (e)(4)(H) because of and to the extent that portions of this record system are exempt from the individual access provisions of subsection (d).

(D) From subsection (f) because of and to the extent that portions of this record system are exempt from the individual access provisions of subsection (d).

(7) System identifier and name: F036 AFDP A, Files on General Officers and Colonels Assigned to General Officer Positions.

(i) Exemption: Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(7) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(4)(G), (H), and (I); and (f).

(ii) Authority: 5 U.S.C. 552a(k)(7).

(iii) Reasons: To protect the integrity of information used in the Reserve Initial Brigadier General Screening Board, the release of which would compromise the selection process.

(8) System identification and name: F036 AF PC O, General Officer Personnel Data System.

(i) Exemption: Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source. Therefore, portions of this system of records

(Air Force General Officer Promotion and Effectiveness Reports with close out dates on or before January 31, 1991) may be exempt pursuant to 5 U.S.C. 552a(k)(7) may be exempt from following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(4)(H), and (f).

(ii) Authority: 5 U.S.C. 552a(k)(7).

(iii) Reason: (A) From subsection (c)(3) because making the disclosure accounting available to the individual may compromise express promises of confidentiality by revealing details about the report and identify other record sources, which may result in circumvention of the access exemption.

(B) From subsection (d) because individual disclosure compromises express promises of confidentiality conferred to protect the integrity of the promotion rating system.

(C) From subsection (e)(4)(H) because of and to the extent that portions of this record system are exempt from the individual access provisions of subsection (d).

(D) From subsection (f) because of and to the extent that portions of this record system are exempt from the individual access provisions of subsection (d).

(9) System identifier and name: F036 AFPC K, Historical Airman Promotion Master Test File.

(i) Exemption: Testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal or military service, if the disclosure would compromise the objectivity or fairness of the test or examination process may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(6) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(4)(G), (H), and (I), and (f).

(ii) Authority: 5 U.S.C. 552a(k)(6).

(iii) Reasons: To protect the integrity, objectivity, and equity of the promotion testing system by keeping test questions and answers in confidence. Reserved.

(10) System identifier and name: F071 AF OSI F, Investigative Applicant Processing Records.

(i) Exemption: Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(4)(G), (H), and (I), and (f).

(ii) Authority: 5 U.S.C. 552a(k)(5).

(iii) Reasons: To protect those who gave information in confidence during Air Force Office of Special Investigations applicant inquiries. Fear of harassment could cause sources not to make frank and open responses about applicant qualifications. This could compromise the integrity of the Air Force Office of Special Investigations personnel program that relies on selecting only qualified people.

(11) System identifier and name: F036 USAFA B, Master Cadet Personnel Record (Active/Historical).

(i) Exemptions: Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identify of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(7) from the following subsections of 5 U.S.C. 552a(d), (e)(4)(H), and (f).

(ii) Authority: 5 U.S.C. 552a(k)(7).

(iii) Reasons: To maintain the candor and integrity of comments needed to evaluate a cadet for commissioning in the Air Force.

(12) System identifier and name: F031 497IG A, Sensitive Compartmented Information Personnel Records.

(i) Exemption: (A) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identify of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(B) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(C) Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) and (k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(4)(G), (H), and (I), and (f).

(ii) Authority: 5 U.S.C. 552a(k)(2) and (k)(5).

(iii) Reasons: To protect the identity of sources to which proper promises of confidentiality have been made during investigations. Without these promises, sources will often be unwilling to provide information essential in adjudicating access in a fair and impartial manner.

(13) System identifier and name: F071 AF OSI B, Security and Related Investigative Records.

(i) Exemption: Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(4)(G), (H), and (I), and (f).

(ii) Authority: 5 U.S.C. 552a(k)(5).

(iii) Reasons: To protect the identity of those who give information in confidence for personnel security and related investigations. Fear of harassment could cause sources to refuse to give this information in the frank and open way needed to pinpoint those areas in an investigation that should be expanded to resolve charges of questionable conduct.

(14) System identifier and name: F031 497IG B, Special Security Case Files.

(i) Exemption: Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(4)(G), (H), and (I), and (f).

(ii) Authority: 5 U.S.C. 552a(k)(5).

(iii) Reasons: To protect the identity of those who give information in confidence for personnel security and related investigations. Fear of harassment could cause sources to refuse to give this information in the frank and open way needed to pinpoint those areas in an investigation that should be expanded to resolve charges of questionable conduct.

(15) System identifier and name: F031 AF SP N, Special Security Files.

(i) Exemption: Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(4)(G), (H), and (I), and (f).

(ii) Authority: 5 U.S.C. 552a(k)(5).

(iii) Reasons: To protect the identity of those who give information in confidence for personnel security and related investigations. Fear of harassment could cause them to refuse to give this information in the frank and open way needed to pinpoint areas in an investigation that should be expanded to resolve charges of questionable conduct.

(16) System identifier and name: F036 AF PC P, Applications for Appointment and Extended Active Duty Files.

(i) Exemption: Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsection of 5 U.S.C. 552a(d).

(ii) Authority: 5 U.S.C. 552a(k)(5).

(iii) Reasons: To protect the identity of confidential sources who furnish information necessary to make determinations about the qualifications, eligibility, and suitability of health care professionals who apply for Reserve of the Air Force appointment or interservice transfer to the Air Force.

(17) System identifier and name: F036 AF DPG, Military Equal Opportunity and Treatment.

(i) Exemption: Investigative material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Therefore, portions of this system of records may be exempt pursuant to 5 U.S.C. 522a(k)(2) from the following subsections of 5 U.S.C. 552a(d), (e)(4)(H), and (f).

(ii) Authority: 5 U.S.C. 552a(k)(2).

(iii) Reasons: (A) From subsection (d) because access to the records contained in this system would inform the subject of an investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection, and would present a serious impediment to law enforcement. In addition, granting individuals access to information collected while an Equal Opportunity and Treatment clarification/investigation is in

progress conflicts with the just, thorough, and timely completion of the complaint, and could possibly enable individuals to interfere, obstruct, or mislead those clarifying/investigating the complaint.

(B) From subsection (e)(4)(H) because this system of records is exempt from individual access pursuant to subsection (k) of the Privacy Act of 1974.

(C) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(18) System identifier and name: F051 AF JA I, Commander Directed Inquiries.

(i) Exemption: Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(ii) Authority: 5 U.S.C. 552a(k)(2).

(iii) Reasons: (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

(19) [Reserved]

(20) System identifier and name: F033 AF A, Information Requests-Freedom of Information Act.

(i) Exemption: During the processing of a Freedom of Information Act request, exempt materials from 'other' systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those other systems of records are entered into this system, the Department of the Air Force hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) Authority: 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) Reasons: Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record, and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(21) System identifier and name: F033 AF B, Privacy Act Request Files.

(i) Exemption: During the processing of a Privacy Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Department of the Air Force hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) Authority: 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) Reason: Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record, and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

(22) System identifier and name: F051 AFJA E, Judge Advocate General's Professional Conduct Files.

(i) *Exemption:* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. Note: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority:* 5 U.S.C. 552a(k)(2).

(iii) *Reasons:* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

(23) System identifier and name F033 USSC A, Information Technology and Control Records.

(i) *Exemption:* Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal

the identity of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions. Any portion of this system of records which falls within the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority:* 5 U.S.C. 552a(k)(2).

(iii) *Reasons:* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) because providing access to investigative records and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

(24) System identifier and name: F036 AETC X, College Scholarship Program.

(i) *Exemption:* Investigatory material compiled solely for the purpose of determining suitability * * * the identity of a confidential source. Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).

(ii) *Authority:* 5 U.S.C. 552a(k)(5).

(iii) *Reasons:* (A) From subsection (c)(3) and (d) and when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential sources to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(B) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

(25) System identifier and name: F032 AFCESA C, Civil Engineer System-Explosive Ordnance Records.

(i) *Exemption:* Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3056, may be exempt pursuant to 5 U.S.C. 552a(k)(3) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(ii) *Authority:* 5 U.S.C. 552a(k)(3).

(iii) *Reasons:* (A) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(B) From subsections (d) and (f) because providing access to investigative records and

the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(C) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(D) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(E) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

(26) System identifier and name: F051 AF JAA, Freedom of Information Appeal Records.

(i) *Exemption:* During the processing of a Privacy Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those 'other' systems of records are entered into this system, the Department of the Air Force hereby claims the same exemptions for the records from those 'other' systems that are entered into this system, as claimed for the original primary system of which they are a part.

(ii) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

(iii) *Reason:* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record, and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, and to preserve the confidentiality and integrity of Federal evaluation materials. The exemption rule for the original records will identify the specific reasons why the records are exempt from specific provisions of 5 U.S.C. 552a.

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APPENDIX E TO PART 806b—PRIVACY IMPACT ASSESSMENT

Section A—Introduction and Overview

The Privacy Act Assessment. The Air Force recognizes the importance of protecting the privacy of individuals, to ensure sufficient protections for the privacy of personal information as we implement citizen-centered e-Government. Privacy issues must be addressed when systems are being developed, and privacy protections must be integrated into the development life cycle of these automated systems. The vehicle for addressing privacy issues in a system under development is the Privacy Impact Assessment. The Privacy Impact Assessment process also provides a means to assure compliance with applicable laws and regulations governing individual privacy.

(a) Purpose. The purpose of this document is to:

(1) Establish the requirements for addressing privacy during the systems development process.

(2) Describe the steps required to complete a Privacy Impact Assessment.

(3) Define the privacy issues you will address in the Privacy Impact Assessment.

(b) Background. The Air Force is responsible for ensuring the privacy, confidentiality, integrity, and availability of personal information. The Air Force recognizes that privacy protection is both a personal and fundamental right. Among the most basic of individuals' rights is an expectation that the Air Force will protect the confidentiality of personal, financial, and employment information. Individuals also have the right to expect that the Air Force will collect, maintain, use, and disseminate identifiable personal information and data only as authorized by law and as necessary to carry out agency responsibilities. Personal information is protected by the following:

(1) Title 5, U.S.C. 552a, The Privacy Act of 1974, as amended, which affords individuals

the right to privacy in records maintained and used by Federal agencies. NOTE: 5 U.S.C. 552a includes Public Law 100–503, The Computer Matching and Privacy Act of 1988.[13]

(2) Public Law 100–235, The Computer Security Act of 1987,[14] which establishes minimum security practices for Federal computer systems.

(3) OMB Circular A–130, Management of Federal Information Resources,[15] which provides instructions to Federal agencies on how to comply with the fair information practices and security requirements for operating automated information systems.

(4) Public Law 107–347, Section 208, E-Gov Act of 2002, which aims to ensure privacy in the conduct of federal information activities.

(5) Title 5, U.S.C. 552, The Freedom of Information Act, as amended, which provides for the disclosure of information maintained by Federal agencies to the public while allowing limited protections for privacy.

(6) DoD Directive 5400.11, Department of Defense Privacy Program,[16] December 13, 1999.

(7) DoD 5400.11–R, Department of Defense Privacy Program,[17] August 1983.

(8) Air Force Instruction 33–332, Air Force Privacy Act Program.

(c) The Air Force Privacy Office is in the Office of the Air Force Chief Information Officer, Directorate of Plans and Policy, and is responsible for overseeing Air Force implementation of the Privacy Act.

Section B—Privacy and Systems Development

System Privacy. Rapid advancements in computer technology make it possible to store and retrieve vast amounts of data of all kinds quickly and efficiently. These advancements have raised concerns about the impact of large computerized information systems on the privacy of data subjects. Public concerns about highly integrated information systems operated by the government make it imperative to commit to a positive and aggressive approach to protecting individual privacy. Air Force Chief Information Officer is requiring the use of this Privacy Impact Assessment in order to ensure that the systems the Air Force develops protect individuals' privacy. The Privacy Impact Assessment incorporates privacy into the development life cycle so that all system development initiatives can appropriately consider privacy issues from the earliest stages of design.

(a) What is a Privacy Impact Assessment? The Privacy Impact Assessment is a process used to evaluate privacy in information systems. The process is designed to guide system owners and developers in assessing privacy through the early stages of development. The process consists of privacy training, gathering data from a project on privacy issues, and identifying and resolving the privacy risks. The Privacy Impact Assessment process is described in detail in Section C, Completing a Privacy Impact Assessment.

(b) When is a Privacy Impact Assessment Done? The Privacy Impact Assessment is initiated in the early stages of the development of a system and completed as part of the required system life cycle reviews. Privacy must be considered when requirements are being analyzed and decisions are being made about data usage and system design. This applies to all of the development methodologies and system life cycles used in the Air Force.

(c) Who completes the Privacy Impact Assessment? Both the system owner and system developers must work together to complete the Privacy Impact Assessment. System owners must address what data is to be used, how the data is to be used, and who will use the data. The system developers must address whether the implementation of the owner's requirements presents any threats to privacy.

(d) What systems have to complete a Privacy Impact Assessment? Accomplish Privacy Impact Assessments when:

(1) Developing or procuring information technology that collects, maintains, or disseminates information in identifiable form from or about members of the public.

(2) Initiating a new collection of information, using information technology, that collects, maintains, or disseminates information in identifiable form for 10 or more persons excluding agencies, instrumentalities, or employees of the Federal Government.

(3) Systems as described above that are undergoing major modifications.

(e) The Air Force or Major Command Privacy Act Officer reserves the right to request that a Privacy Impact Assessment be completed on any system that may have privacy risks.

Section C—Completing a Privacy Impact Assessment

The Privacy Impact Assessment. This section describes the steps required to complete a Privacy Impact Assessment. These steps are summarized in Table A4.1, Outline of Steps for Completing a Privacy Impact Assessment.

Training. Training on the Privacy Impact Assessment will be available, on request,

[13] *http://www.defenselink.mil/privacy/1975OMB__PAGuide/jun1989.pdf.*

[14] *http://csrc.nist.gov/secplcy/csa__87.txt.*

[15] *http://www.whitehouse.gov/omb/circulars/a130/a130trans4.html.*

[16] *http://www.dtic.mil/whs/directives/corres/html/540011.htm.*

[17] *http://www.dtic.mil/whs/directives/corres/html/540011r.htm.*

from the Major Command Privacy Act Officer. The training consists of describing the Privacy Impact Assessment process and provides detail about the privacy issues and privacy questions to be answered to complete the Privacy Impact Assessment. Major Command Privacy Act Officers may use appendix E, Sections A, B, D, and E for this purpose. The intended audience is the personnel responsible for writing the Privacy Impact Assessment document.

The Privacy Impact Assessment Document. Preparing the Privacy Impact Assessment document requires the system owner and developer to answer the privacy questions in Section E. A brief explanation should be written for each question. Issues that do not apply to a system should be noted as "Not Applicable." During the development of the Privacy Impact Assessment document, the Major Command Privacy Act Officer will be available to answer questions related to the Privacy Impact Assessment process and other concerns that may arise with respect to privacy.

Review of the Privacy Impact Assessment Document. Submit the completed Privacy Impact Assessment document to the Major Command Privacy Act Office for review. The purpose of the review is to identify privacy risks in the system.

Approval of the Privacy Impact Assessment. The system life cycle review process (Command, Control, Communications, Computers, and Intelligence Support Plan) will be used to validate the incorporation of the design requirements to resolve the privacy risks. Major Command and Headquarters Air Force Functional CIOs will issue final approval of the Privacy Impact Assessment.

TABLE A4.1—OUTLINE OF STEPS FOR COMPLETING A PRIVACY IMPACT ASSESSMENT

Step	Who	Procedure
1	System Owner, and Developer	Request and complete Privacy Impact Assessment Training.
2	System Owner, and Developer	Answer the questions in Section E, Privacy Questions. For assistance contact your Major Command Privacy Act Officer.
3	System Owner, and Developer	Submit the Privacy Impact Assessment document to the Major Command Privacy Act Officer.
4	Major Command Privacy Act Officer	Review the Privacy Impact Assessment document to identify privacy risks from the information provided. The Major Command Privacy Act Officer will get clarification from the owner and developer as needed.
5	System Owner and Developer, Major Command Privacy Act Officer.	The System Owner, Developer and the Major Command Privacy Act Officer should reach agreement on design requirements to resolve all identified risks.
6	System Owner, Developer, and Major Command Privacy Act Officer.	Participate in the required system life cycle reviews to ensure satisfactory resolution of identified privacy risks to obtain formal approval from the Major Command or Headquarters Air Force Functional CIO.
7	Major Command or Headquarters Air Force Functional CIO.	Issue final approval of Privacy Impact Assessment, and send a copy to Air Force Chief Information Officer/P.
8	Air Force Chief Information Officer/P	When feasible, publish Privacy Impact Assessment on Freedom of Information Act Web page (*http://www.foia.af.mil*).

Section D—Privacy Issues in Information Systems

Privacy Act of 1974, 5 U.S.C. 552a as Amended

Title 5, U.S.C., 552a, The Privacy Act of 1974, as amended, requires Federal Agencies to protect personally identifiable information. It states specifically:

Each agency that maintains a system of records shall:

Maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

Collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

Maintain all records used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

Establish appropriate administrative, technical and physical safeguards to ensure the security and confidentiality of records

and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

Definitions

Accuracy—within sufficient tolerance for error to assure the quality of the record in terms of its use in making a determination.

Completeness—all elements necessary for making a determination are present before such determination is made.

Determination—any decision affecting an individual which, in whole or in part, is based on information contained in the record and which is made by any person or agency.

Necessary—a threshold of need for an element of information greater than mere relevance and utility.

Record—any item, collection or grouping of information about an individual and identifiable to that individual that is maintained by an agency.

Relevance—limitation to only those elements of information that clearly bear on the determination(s) for which the records are intended.

Routine Use—with respect to the disclosure of a record, the use of such record outside DoD for a purpose that is compatible with the purpose for which it was collected.

System of Records—a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

Timeliness—sufficiently current to ensure that any determination based on the record will be accurate and fair.

Information and Privacy

To fulfill the commitment of the Air Force to protect personal information, several issues must be addressed with respect to privacy.

The use of information must be controlled.

Information may be used only for a necessary and lawful purpose.

Individuals must be informed in writing of the principal purpose and routine uses of the information being collected from them.

Information collected for a particular purpose should not be used for another purpose without the data subject's consent unless such other uses are specifically authorized or mandated by law.

Any information used must be sufficiently accurate, relevant, timely and complete to assure fair treatment of the individual.

Given the availability of vast amounts of stored information and the expanded capabilities of information systems to process the information, it is foreseeable that there will be increased requests to share that information. With the potential expanded uses of data in automated systems it is important to remember that information can only be used for the purpose for which it was collected unless other uses are specifically authorized or mandated by law. If the data is to be used for other purposes, then the public must be provided notice of those other uses. These procedures do not in themselves create any legal rights, but are intended to express the full and sincere commitment of the Air Force to protect individual privacy rights and which provide redress for violations of those rights.

DATA IN THE SYSTEM

The sources of the information in the system are an important privacy consideration if the data is gathered from other than Air Force records. Information collected from non-Air Force sources should be verified, to the extent practicable, for accuracy, that the information is current, and complete. This is especially important if the information will be used to make determinations about individuals.

Access to the Data

Who has access to the data in a system must be defined and documented. Users of the data can be individuals, other systems, and other agencies. Individuals who have access to the data can be system users, system administrators, system owners, managers, and developers. When individuals are granted access to a system, their access should be limited, where possible, to only that data needed to perform their assigned duties. If individuals are granted access to all of the data in a system, procedures need to be in place to deter and detect browsing and unauthorized access. Other systems are any programs or projects that interface with the system and have access to the data. Other agencies can be International, Federal, state, or local entities that have access to Air Force data.

Attributes of the Data

When requirements for the data to be used in the system are being determined, those requirements must include the privacy attributes of the data. The privacy attributes are derived from the legal requirements imposed by The Privacy Act of 1974. First, the data must be relevant and necessary to accomplish the purpose of the system. Second, the data must be complete, accurate, and timely. It is important to ensure the data has these privacy attributes in order to assure fairness to the individual in making decisions based on the data.

Maintenance of Administrative Controls

Automation of systems can lead to the consolidation of processes, data, and the controls in place to protect the data. When administrative controls are consolidated, they should be evaluated so that all necessary controls remain in place to the degree necessary to continue to control access to and use of the data. Document record retention and disposal procedures and coordinate them with the Major Command Records Manager.

Section E—Privacy Questions

Data in the System

1. Generally describe the information to be used in System the system.

2. What are the sources of the information in the system?

a. What Air Force files and databases are used?

b. What Federal Agencies are providing data for use in the system?

c. What State and local agencies are providing data for use in the system?

d. What other third party sources will data be collected from?

e. What information will be collected from the employee?

3. Is data accurate and complete?

a. How will data collected from sources other than Air Force records and the subject be verified for accuracy?

b. How will data be checked for completeness?

c. Is the data current? How do you know?

4. Are the data elements described in detail and documented? If yes, what is the name of the document?

Access to the Data

1. Who will have access to the data in the system Data (Users, Managers, System Administrators, Developers, Other)?

2. How is access to the data by a user determined? Are criteria, procedures, controls, and responsibilities regarding access documented?

3. Will users have access to all data on the system or will the user's access be restricted? Explain.

4. What controls are in place to prevent the misuse (*e.g.*, browsing) of data by those having access?

5. Does the system share data with another system?

a. Do other systems share data or have access to data in this system? If yes, explain.

b. Who will be responsible for protecting the privacy rights of the employees affected by the interface?

6. Will other agencies have access to the data in the system?

a. Will other agencies share data or have access to data in this system (International, Federal, State, Local, Other)?

b. How will the data be used by the agency?

c. Who is responsible for assuring proper use of the data?

d. How will the system ensure that agencies only get the information they are entitled to under applicable laws?

Attributes of the Data

1. Is the use of the data both relevant and necessary Data to the purpose for which the system is being designed?

2. Will the system create new data about an individual?

a. Will the system derive new data or create previously unavailable data about an individual through aggregation from the information collected?

b. Will the new data be placed in the individual's record?

c. Can the system make determinations about the record subject that would not be possible without the new data?

d. How will the new data be verified for relevance and accuracy?

3. Is data being consolidated?

a. If data is being consolidated, what controls are in place to protect the data from unauthorized access or use?

b. If processes are being consolidated, are the proper controls remaining in place to protect the data and prevent unauthorized access? Explain.

4. How will the data be retrieved? Is it retrieved by a personal identifier? If yes, explain.

Maintenance of Administrative Controls

(1) a. Explain how the system and its use will ensure Administrative equitable treatment of record subjects.

b. If the system is operated at more than one location, how will consistent use of the system and data be maintained?

c. Explain any possibility of disparate treatment of individuals or groups.

(2) a. Coordinate proposed maintenance and disposition of the records with the Major Command Records Manager.

b. While the data is retained in the system, what are the requirements for determining if the data is still sufficiently accurate, relevant, timely, and complete to ensure fairness in making determinations?

(3) a. Is the system using technologies in ways that the Air Force has not previously employed?

b. How does the use of this technology affect personal privacy?

(4) a. Will this system provide the capability to identify, locate, and monitor individuals? If yes, explain.

b. Will this system provide the capability to identify, locate, and monitor groups of people? If yes, explain.

c. What controls will be used to prevent unauthorized monitoring?

(5) a. Under which Systems of Record notice does the system operate? Provide number and name.

b. If the system is being modified, will the system of record require amendment or revision? Explain.

PART 807—SALE TO THE PUBLIC

Sec.
807.1 General requirements.
807.2 Charges for publications and forms.
807.3 Requests for classified material, For Official Use Only material, accountable forms, storage safeguard forms, Limited (L) distribution items, and items with restrictive distribution caveats.
807.4 Availability and nonavailability of stock.
807.5 Processing requests.
807.6 Depositing payments.

AUTHORITY: 10 U.S.C. 8013.

SOURCE: 55 FR 36631, Sept. 6, 1990, unless otherwise noted.

§ 807.1 General requirements.

(a) Unaltered Air Force publications and forms will be made available to the public with or without charge, subject to the requirements of this part. Base Chiefs of Information Management will set up procedures to meet these needs and will make available Master Publications Libraries for public use according to AFR 4–61. They will also advise requesters that these libraries are available, since in many cases this will satisfy their needs and reduce workloads in processing sales requests. If the item is on sale by the Superintendent of Documents, GPO, refer the request to that outlet. Refer general public requests for Air Force administrative publications and forms to the National Technical Information Service (NTIS), Defense Publication Section, US Department of Commerce, 4285 Port Royal Road, Springfield, VA 22161–0001.

(b) The Air Force does not consider these unaltered publications and forms as records, within the meaning of the Freedom of Information Act (FOIA), as outlined in 5 U.S.C. 552 and implemented by part 806 of this chapter. Refer requests that invoke the FOIA to the chief, base information management, for processing.

(c) Units will process requests under the Foreign Military Sales Program (FMS) as specified in AFR 4–71, chapter 11.

(d) Units will send requests from foreign governments, their representatives, or international organizations to the MAJCOM foreign disclosure policy office and to HQ USAF/CVAII, Washington DC 20330–5000. Also send information copies of such requests to the base public affairs office. Commands will supplement this requirement to include policies pertaining to those items for which they have authority to release.

(e) Units will return a request for non-Air Force items to the requester for submission to appropriate agency.

§ 807.2 Charges for publications and forms.

(a) The Air Force applies charges to all requests unless specifically excluded.

(b) The Air Force applies charges according to part 813, Schedule of Fees for Copying, Certifying, and Searching Records and Other Documentary Material. Additional guidance is in part 812, User Charges, including specific exclusion from charges as listed in § 812.5. As indicated, the list of exclusions is not all inclusive and recommendations for additional exclusions are sent to the office of primary responsibility for part 812 of this chapter.

(c) When a contractor requires publications and forms to perform a contract, the Air Force furnishes them without charge, if the government contracting officer approves these requirements.

§ 807.3 Requests for classified material, For Official Use Only material, accountable forms, storage safeguard forms, Limited (L) distribution items, and items with restrictive distribution caveats.

(a) *Classified material.* The unit receiving the requests should tell the requester that the Air Force cannot authorize the material for release because it is currently and properly classified in the interest of national security as authority by Executive Order, and must be protected from unauthorized disclosure.

(b) *For Official Use Only (FOUO) material.* The office of primary responsibility for the material will review

these requests to determine the material's releasability.

(c) *Accountable forms*. The unit receiving the request will return it to the requester stating that the Air Force stringently controls these forms and cannot release them to unauthorized personnel since their misuse could jeopardize Department of Defense security or could result in fraudulent financial gain or claims against the government.

(d) *Storage safeguard forms*. The unit receiving these requests returns them to the requesters stating that the Air Force specially controls these forms and that they are not releasable outside the Department of Defense since they could be put to unauthorized or fraudulent use.

(e) Limited (L) distribution items are not releasable outside the Department of Defense without special review according to AFR 700–6. Units receiving these requests should refer them to the SCS manager shown in the index or on the cover of the publications. Advise the requesters of the referral.

(f) *Items with restrictive distribution caveats*. Some publications have restrictive distribution caveats on the cover. Follow the instructions stated and advise the requesters of the referral.

§ 807.4 Availability and nonavailability of stock.

(a) Limit quantities furnished so that stock levels required for operational Air Force support are not jeopardized.

(b) If the item is not available from publishing distribution office (PDO) stock, obtain it from the Air Force Publishing Distribution Center. If the item is under revision, advise the requester that it is being revised and that no stock is available.

(c) If stocks are not available and the item is being reprinted, advise the requester that stocks are expected to be available in 90 calendar days and to resubmit at that time.

§ 807.5 Processing requests.

Payment is required before shipping the requested material. Payment must be by check or money order.

(a) Upon receipt of the request, determine the cost involved and request the material.

(b) Upon receipt of the item, advise the requester to resubmit the required payment and send the material after payment is received.

(c) If the material cannot be obtained, advise the requester of the reason.

§ 807.6 Depositing payments.

Obtain instructions from the local Accounting and Finance Office regarding how checks or money orders must be prepared and required procedures for depositing them.

PART 809a—INSTALLATION ENTRY POLICY, CIVIL DISTURBANCE INTERVENTION AND DISASTER ASSISTANCE

Sec.
809a.0 Purpose.

Subpart A—Installation Entry Policy

809a.1 Random installation entry point checks.
809a.2 Military responsibility and authority.
809a.3 Unauthorized entry.
809a.4 Use of Government facilities.
809a.5 Barment procedures.

Subpart B—Civil Disturbance Intervention and Disaster Assistance

809a.6 Authority.
809a.7 Definitions.
809a.8 Installation policies and laws.
809a.9 Conditions for use of Air Force resources.
809a.10 Military commanders' responsibilities.
809a.11 Procedures outside the United States.

AUTHORITY: 10 U.S.C. 332 and 333.

SOURCE: 67 FR 13718, Mar. 26, 2002, unless otherwise noted.

§ 809a.0 Purpose.

This part prescribes the commanders' authority for enforcing order within or near Air Force installations under their jurisdiction and controlling entry to those installations. It provides guidance for use of military personnel in controlling civil disturbances and in supporting disaster relief operations. This part applies to installations in the

United States, its territories and possessions, and will be used to the maximum extent possible in the overseas commands. Instructions issued by the appropriate overseas commander, status of forces agreements, and other international agreements provide more definitive guidance for the overseas commands. Nothing in this part should be construed as authorizing or requiring security forces units to collect and maintain information concerning persons or organizations having no affiliation with the Air Force other than a list of persons barred from the installation.

Subpart A—Installation Entry Policy

§ 809a.1 Random installation entry point checks.

The installation commander determines when, where, and how to implement random checks of vehicles or pedestrians. The commander conducts random checks to protect the security of the command or to protect government property.

§ 809a.2 Military responsibility and authority.

(a) Air Force installation commanders are responsible for protecting personnel and property under their jurisdiction and for maintaining order on installations, to ensure the uninterrupted and successful accomplishment of the Air Force mission.

(b) Each commander is authorized to grant or deny access to their installations, and to exclude or remove persons whose presence is unauthorized. In excluding or removing persons from the installation, the installation commander must not act in an arbitrary or capricious manner. Their action must be reasonable in relation to their responsibility to protect and to preserve order on the installation and to safeguard persons and property thereon. As far as practicable, they should prescribe by regulation the rules and conditions governing access to their installation.

§ 809a.3 Unauthorized entry.

Under Section 21 of the Internal Security Act of 1950 (50 U.S.C. 797), any directive issued by the commander of a military installation or facility, which includes the parameters for authorized entry to or exit from a military installation, is legally enforceable against all persons whether or not those persons are subject to the Uniformed Code of Military Justice (UCMJ). Military personnel who reenter an installation after having been properly ordered not to do so may be apprehended. Civilian violators may be detained and either escorted off the installation or turned over to proper civilian authorities. Civilian violators may be prosecuted under 18 U.S.C. 1382.

§ 809a.4 Use of Government facilities.

Commanders are prohibited from authorizing demonstrations for partisan political purposes. Demonstrations on any Air Force installation for other than political purposes may only occur with the prior approval of the installation commander. Demonstrations that could result in interference with, or prevention of, the orderly accomplishment of the mission of an installation or that present a clear danger to loyalty, discipline or morale of members of the Armed Forces will not be approved.

§ 809a.5 Barment procedures.

Under the authority of 50 U.S.C. 797, installation commanders may deny access to the installation through the use of a barment order. Barment orders should be in writing but may also be oral. Security forces maintain a list of personnel barred from the installation.

Subpart B—Civil Disturbance Intervention and Disaster Assistance

§ 809a.6 Authority.

The authority to intervene during civil disturbances and to provide disaster assistance is bound by directives issued by competent authorities. States must request federal military intervention or aid directly from the President of the United States by the state's legislature or executive. Installation commanders must immediately report these requests in accordance with AFI 10–802, *Military Support to*

Civil Authorities (Available from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.).

§ 809a.7 Definitions.

The following definitions apply to this part:

(a) *Emergencies*. These are conditions which affect public welfare and occur as a result of enemy attack, insurrection, civil disturbances, earthquake, fire, flood, or other public disasters which endanger life and property or disrupt the usual process of government. The term "emergency" includes any or all of the conditions explained in this section.

(b) *Civil defense emergency*. This is a disaster situation resulting from devastation created by an enemy attack and requiring emergency operations during and following attack. It may also be proclaimed by appropriate authority in anticipation of an attack.

(c) *Civil disturbances*. These are group acts of violence or disorder prejudicial to public law and order including those which follow a major disaster. They include riots, acts of violence, insurrections, unlawful obstructions or assemblages, or other disorders.

(d) *Major disaster*. Any flood, fire, hurricane, or other catastrophe which, in the determination of the President, is or threatens to be of sufficient severity and magnitude to warrant disaster assistance by the Federal Government to supplement the efforts and available resources of the State and local governments in alleviating the damage, hardship, or suffering caused thereby.

§ 809a.8 Installation policies and laws.

This subpart contains policies on the use of Air Force military personnel in civil disturbances and disasters. The more important laws concerning military aid to civil authorities are also summarized.

(a) The Air Force gives military assistance to civil authorities in civil defense or civil disturbances and disasters only when such assistance is requested or directed. Commanders will not undertake such assistance without authority, unless the overruling demands of humanity compel immediate action to protect life and property and to restore order.

(b) The military service having available resources nearest the affected area is responsible for providing initial assistance to civil authorities in emergencies. Subsequent operations are to be according to the mutual agreement between the senior service commanders concerned.

(c) The protection of life and property and the maintenance of law and order within the territorial jurisdiction of any State is the primary responsibility of State and local authorities. It is well-established U.S. Government policy that intervention with military forces takes place only after State and local authorities have used their own forces and are unable to control the situation, or when they do not take appropriate action.

§ 809a.9 Conditions for use of Air Force resources.

This part is not intended to extend Air Force responsibilities in emergencies to generate additional resources (manpower, materiel, facilities, etc.) requirements, or encourage participation in such operations at the expense of the Air Force primary mission. It is a guide for the employment of Air Force resources when:

(a) A disaster or disturbance occurs in areas in which the U.S. Air Force is the executive agent of the United States.

(b) A disaster or disturbance occurs in areas that are remote from an Army installation but near an Air Force installation, thereby necessitating Air Force assumption of responsibility pending arrival of Army personnel.

(c) The overriding demand of conditions resulting from a natural disaster compels immediate action to protect life and property and to restore order.

§ 809a.10 Military commanders' responsibilities.

(a) Civilians in the affected area will be informed of the rules of conduct and other restrictive measures to be enforced by the military. These will be announced by local proclamation or order, and will be given the widest publicity by all available media.

(b) Persons not normally subject to military law, who are taken into custody by military forces incident to civil disturbances, will be turned over to the civil authorities as soon as possible.

(c) Military forces will ordinarily exercise police powers previously inoperative in an affected area; restore and maintain order; maintain essential transportation and communication; and provide necessary relief measures.

(d) U.S. Air Force civilian employees may be used, in any assignments in which they are capable and willing to serve. In planning for on-base contingencies of fires, floods, hurricanes, and other natural disasters, arrangements should be made for the identification and voluntary use of individual employees to the extent that the needs for their services are anticipated.

§ 809a.11 Procedures outside the United States.

It is Air Force policy to make every reasonable effort to avoid any confrontation between United States military forces and host nation demonstrators or other dissidents posing a threat to Air Force resources. Intervention by United States military personnel outside the United States is governed by international law, bilateral and other international agreements to which the United States is a party, and host-nation laws. Local plans to counter such situations must include provisions to request and obtain host nation civil or military support as quickly as possible.

SUBCHAPTER B—SALES AND SERVICES

PART 811—RELEASE, DISSEMINATION, AND SALE OF VISUAL INFORMATION MATERIALS

Sec.
811.1 Exceptions.
811.2 Release of visual information materials.
811.3 Official requests for visual information productions or materials.
811.4 Selling visual information materials.
811.5 Customers exempt from fees.
811.6 Visual information product/material loans.
811.7 Collecting and controlling fees.
811.8 Forms prescribed and availability of publications.

AUTHORITY: 10 U.S.C. 8013.

SOURCE: 65 FR 64619, Oct. 30, 2000, unless otherwise noted.

§ 811.1 Exceptions.

The regulations in this part do not apply to:

(a) Visual information (VI) materials made for the Air Force Office of Special Investigations for use in an investigation or a counterintelligence report. (See Air Force Instruction (AFI) 90–301, The Inspector General Complaints, which describes who may use these materials.)

(b) VI materials made during Air Force investigations of aircraft or missile mishaps according to AFI 91–204, Safety Investigations and Reports. (See AFI 90–301.)

§ 811.2 Release of visual information materials.

(a) Only the Secretary of the Air Force for Public Affairs (SAF/PA) clears and releases Air Force materials for use outside Department of Defense (DoD), according to AFI 35–205, Air Force Security and Policy Review Program.

(b) The Secretary of the Air Force for Legislative Liaison (SAF/LL) arranges the release of VI material through SAF/PA when a member of Congress asks for them for official use.

(c) The International Affairs Division (HQ USAF/CVAII) or, in some cases, the major command (MAJCOM) Foreign Disclosure Office, must authorize release of classified and unclassified materials to foreign governments and international organizations or their representatives.

§ 811.3 Official requests for visual information productions or materials.

(a) Send official Air Force requests for productions or materials from the DoD Central Records Centers by letter or message. Include:

(1) Descriptions of the images needed, including media format, dates, etc.

(2) Visual information record identification number (VIRIN), production, or Research, development, test, and evaluation (RDT&E) identification numbers, if known.

(3) Intended use and purpose of the material.

(4) The date needed and a statement of why products are needed on a specific date.

(b) Send inquiries about motion picture or television materials to the Defense Visual Information Center (DVIC), 1363 Z Street, Building 2730, March ARB, CA 92518–2703.

(c) Send Air Force customer inquiries about still photographic materials to 11 CS/SCUA, Bolling AFB, Washington, DC 20332–0403 (the Air Force accessioning point).

(d) Send non-Air Force customers' inquiries about still photographic materials to the DVIC.

§ 811.4 Selling visual information materials.

(a) Air Force VI activities cannot sell materials.

(b) HQ AFCIC/ITSM may approve the loan of copies of original materials for federal government use.

(c) Send requests to buy:

(1) Completed, cleared, productions, to the National Archives and Records Administration, National Audiovisual Center, Information Office, 8700 Edgeworth Drive, Capitol Heights, MD 20722–3701.

(2) Nonproduction VI motion media to the DVIC. The center may sell other Air Force VI motion picture and television materials, such as historical and stock footage. When it sells VI motion

media, the DVIC assesses charges, unless §811.5 exempts the requesting activity.

(3) VI still media to the DoD Still Media Records Center (SMRC), Attn: SSRC, Washington, DC 20374–1681. When SMRC sells VI still media, the SMRC assesses charges, unless §811.5 exempts the requesting activity.

§811.5 Customers exempt from fees.

Title III of the 1968 Intergovernmental Cooperation Act (42 U.S.C. 4201, 4231, and 4233) exempts some customers from paying for products and loans. This applies if the supplier has sufficient funds and if the exemption does not impair its mission. The requesting agency must certify that the materials are not commercially available. When requests for VI material do not meet exemption criteria, the requesting agency pays the fees. Exempted customers include:

(a) DoD and other government agencies asking for materials for official activities (see DoD Instruction 4000.19, Interservice, and Intergovernmental Support, August 9, 1995, and DoD Directive 5040.2, Visual Information (VI), December 7, 1987.

(b) Members of Congress asking for VI materials for official activities.

(c) VI records center materials or services furnished according to law or Executive Order.

(d) Federal, state, territorial, county, municipal governments, or their agencies, for activities contributing to an Air Force or DoD objective.

(e) Nonprofit organizations for public health, education, or welfare purposes.

(f) Armed Forces members with a casualty status, their next of kin, or authorized representative, if VI material requested relates to the member and does not compromise classified information or an accident investigation board's work.

(g) The general public, to help the Armed Forces recruiting program or enhance public understanding of the Armed Forces, when SAF/PA determines that VI materials or services promote the Air Force's best interest.

(h) Incidental or occasional requests for VI records center materials or services, including requests from residents of foreign countries, when fees would be inappropriate. AFI 16–101, International Affairs and Security Assistance Management, tells how a foreign government may obtain Air Force VI materials.

(i) Legitimate news organizations working on news productions, documentaries, or print products that inform the public on Air Force activities.

§811.6 Visual information product/material loans.

(a) You may request unclassified and classified copies of current Air Force productions and loans of DoD and other Federal productions from JVISDA, ATTN: ASQV-JVIA-T-AS, Bldg. 3, Bay 3, 11 Hap Arnold Blvd., Tobyhanna, PA 18466–5102.

(1) For unclassified products, use your organization's letterhead, identify subject title, PIN, format, and quantity.

(2) For classified products, use your organization's letterhead, identify subject title, personal identification number (PIN), format, and quantity. Also, indicate that either your organization commander or security officer, and MAJCOM VI manager approve the need.

(b) You may request other VI materials, such as, still images and motion media stock footage, from DVIC/OMPA, 1363 Z Street, Building 2730, March ARB, CA 92518–2703.

§811.7 Collecting and controlling fees.

(a) The DoD records centers usually collect fees in advance. Exceptions are sales where you cannot determine actual cost until work is completed (for example, television and motion picture services with per minute or per footage charges).

(b) Customers pay fees, per AFR 177–108, Paying and Collecting Transactions at Base Level, with cash, treasury check, certified check, cashier's check, bank draft, or postal money order.

§811.8 Forms prescribed and availability of publications.

(a) AF Form 833, Visual Information Request, AF Form 1340, Visual Information Support Center Workload Report, DD Form 1995, Visual Information (VI) Production Request and Report,

DD Form 2054–1, Visual Information (VI) Annual Report, and DD Form 2537, Visual Information Caption Sheet are prescribed by this part.

(b) Air Force publications and forms referenced in this part are available from NTIS, 5285 Port Royal Road, Springfield, VA 22161 or online at *http://www.afpubs.hq.af.mil*. DoD publications are available at *http://www.defenselink.mil/pubs*.

PART 813—VISUAL INFORMATION DOCUMENTATION PROGRAM

Sec.
813.1 Purpose of the visual information documentation (VIDOC) program.
813.2 Sources of VIDOC.
813.3 Responsibilities.
813.4 Combat camera operations.
813.5 Shipping or transmitting visual information documentation images.
813.6 Planning and requesting combat documentation.
813.7 Readiness reporting.

AUTHORITY: 10 U.S.C. 8013.

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§ 813.1 Purpose of the visual information documentation (VIDOC) program.

Using various visual and audio media, the Air Force VIDOC program records important Air Force operations, historical events, and activities for use as decision making and communicative tools. VIDOC of Air Force combat operations is called COMCAM documentation. Air Force publications are available at NTIS, 5285 Port Royal Road, Springfield, VA 22161 or online at *http://www.afpubs.hq.af.mil*. DoD publications are available at *http://www.defenselink.mil/pubs*.

§ 813.2 Sources of VIDOC.

Primary sources of VIDOC materials include:

(a) HQ AMC active and reserve combat camera (COMCAM) forces, both ground and aerial, whose primary goal is still and motion media documentation of Air Force and air component combat and combat support operations, and related peacetime activities such as humanitarian actions, exercises, readiness tests, and operations.

(b) Visual information forces with combat documentation capabilities from other commands: HQs ACC, AETC, AFRES, and AFSPACECOM.

(c) Communications squadron base visual information centers (BVISCs).

(d) Air Digital Recorder (ADR) images from airborne imagery systems, such as heads up displays, radar scopes, and images from electro-optical sensors carried aboard aircraft and weapons systems.

(e) Photography of Air Force Research, Development, Test & Evaluation (RDT&E) activities, including high speed still and motion media optical instrumentation.

§ 813.3 Responsibilities.

(a) HQ AFCIC/ITSM:

(1) Sets Air Force VIDOC policy.

(2) Oversees United States Air Force (USAF) COMCAM programs and combat readiness.

(3) Makes sure Air Force participates in joint actions by coordinating with the Office of the Secretary of Defense staff, Joint Chiefs of Staff (JCS), executive departments, and other branches of the United States Government.

(4) Approves use of Air Force COMCAM forces in non-Air Force activities.

(b) Air components:

(1) Manage air component COMCAM and visual information support within their areas of responsibility. Documents significant events and operations for theater and national-level use.

(2) Sets requirements for COMCAM and VI support. Includes requirements in operations plans (OPLAN) force lists, concept plans (CONPLAN), operations orders (OPORD), and similar documents. See Air Force Manual (AFMAN) 10–401, Operation Plan and Concept Plan Development and Implementation.

(3) Coordinate with MAJCOM VI managers to plan and source VIDOC forces for war, contingencies, and exercises.

(4) Provide input (VI and COMCAM requirements) to HQ AMC/SCMV, 203 West Losey Street, Room 3180, Scott AFB, IL 62225–5223, as required to develop the annual VI Exercise Support Plan. Include requirements to exercise

VI forces to refine operational procedures and meet defined objectives.

(c) HQ AMC:

(1) Provides primary Air Force ADR theater support to the air component commanders.

(2) Maintains a deployable theater support Unified Transportation Command (UTC) to manage ADR requirements above the aviation wing level. This includes the gathering, editing, copying, and distribution of ADR images from combat aviation squadrons for operational analysis, bomb damage assessment, collateral intelligence, training, historical, public affairs, and other needs.

(3) Sets combat training standards and develops programs for all Air Force COMCAM personnel (includes both formal classroom and field readiness training).

(4) Coordinates and meets COMCAM needs in war, operations, and concept plans.

(5) Provides the Air Force's primary COMCAM capability and assists air component and joint commands with deliberate and crisis action planning for USAF's COMCAM assets.

(6) Provides component and theater commands COMCAM planning assistance and expertise for contingencies, humanitarian actions, exercises, and combat operations.

(7) Acts as manpower and equipment force packaging (MEFPAK) manager for COMCAM UTCs.

(8) Funds HQ AMC COMCAM personnel and equipment for contingency or wartime deployments. (The requester funds temporary duty and supply costs for planned events, such as non-JCS exercises and competitions.)

(9) Develops and monitors the annual Air Force-wide VI Exercise Support Plan for the Air Staff, with assistance from air components and supporting MAJCOMs. (Use criteria contained in §813.4(e)(1) and provide equitable deployment opportunity for tasked commands' VI resources.)

(d) MAJCOM VI managers:

(1) Plan and set policy for documenting activities of operational, historical, public affairs, or other significance within their commands.

(2) Train and equip VIDOC forces to document war, contingencies, major events, Air Force and joint exercises, and weapons tests.

(3) Make sure COMCAM and BVISC forces meet their wartime tasking and identify and resolve deficiencies. Refer significant deficiencies and problems and proposed resolution to HQ AFCIC/ITSM.

(4) Allow documentation of significant Air Force activities and events, regardless of their sensitivity or classification. Protect materials as the supported command directs. Safeguard classified images or handle them according to Department of Defense (DoD) Directive 5200.1, DoD Information Security Program, June 7, 1982, with Changes 1 and 2, and AFI 31–401, Information Security Program Management. The authority in charge of the event or operation approves documentation distribution.

(5) Update UTC availability in MAJCOM information systems.

(6) Assist Air Force Operations Group, in identifying the command's capability to support COMCAM and VI requirements.

(7) Provide inputs to HQ AMC/SCMV for the annual VI Exercise Support Plan for JCS exercises.

(8) Make sure units that have deployable VI teams have Status of Resources and Training System (SORTS) reportable designed operational capability (DOC) statements that accurately reflect their mission and taskings.

(9) Develop and oversee measurements, such as operational readiness inspection criteria, to evaluate VI force readiness at DOC-tasked units.

§813.4 Combat camera operations.

(a) Air Force COMCAM forces document Air Force and air component activities.

(b) The supported unified command or joint task force commander, through the air component commander (when assigned), controls Air Force COMCAM forces in a joint environment. If an air component is assigned, the air component normally manages documentation of its operations. Air Force COMCAM and visual information

support for joint operations will be proportionate to USAF combat force participation. In airlift operations, HQ AMC may be the supported command.

(c) During contingencies, exercises, and other operations, the Air Force provides its share of Unified Command headquarters COMCAM and visual information support forces for still photographic, motion media, graphics, and other VI services.

(d) COMCAM and VI forces take part in Air Force and joint exercises to test procedures and over-all readiness. COMCAM and VI forces also provide VI products to command, operations, public affairs, historical, and other significant customers.

(e) Sourcing COMCAM forces. See AFMAN 10–401 for specific procedures.

(1) When VI support teams are required, the lead wing's VI UTC deploys as primary, whenever possible. If lead wing VI support is not available, the providing command sources the requirement from other active or reserve component forces, or coordinates with other MAJCOMs for assistance.

(2) Air Force VI personnel who assist supported commands in determining COMCAM and VI requirements and sourcing consider the total USAF VI community as a resource. Planners consider employing USAF deployable VI support teams, augmentation combat documentation teams from AFSPACECOM, AETC, and ACC, as well as active and reserve COMCAM teams.

§ 813.5 Shipping or transmitting visual information documentation images.

(a) *COMCAM images*. Send COMCAM images to the DoD Joint Combat Camera Center, Room 5A518, Pentagon, Washington, DC 20330–3000, by the fastest means possible, following the approval procedures that on-scene and theater commanders set.

(b) *Other non-COMCAM images*. After use, send significant non-COMCAM images to the appropriate DoD media records center through the Air Force record center accessioning point.

(c) *Identification of VIDOC materials*. Clearly identify all VIDOC and COMCAM material with slates, captions, and cover stories.

§ 813.6 Planning and requesting combat documentation.

(a) *Planned combat documentation*. Air components identify documentation needs as early as possible in OPLANs, CONPLANs, and OPORDs and send copies of these plans to HQ AMC/SCMV, 203 West Losey Street, Room 3180, Scott AFB, IL 62225–5223. Include the contact for planning and support.

(b) *Activity documentation*. MAJCOMs may request that HQ AMC document their activities. Send information copies of requests to HQ AFCIC/ITSM, 1250 Air Force Pentagon, Washington, DC 20330–1250, and HQ AMC/SCMV. When a supporting component command operationally controls HQ AMC COMCAM units, other organizations that need support must coordinate requests with the supported command.

(c) *Unplanned combat documentation*. Send short notice requests to the supported operational commander as soon as possible, with information copies to HQ AFCIC/ITSM and HQ AMC/SCMO. Identify end product requirements, media formats, and deadlines.

(d) *Humanitarian, disaster relief, and contingencies*. Theater commanders normally task the supporting component through the Joint Operation Planning and Execution System, that in turn, requests support from HQ AMC. HQ USAF can directly task HQ AMC to document humanitarian, disaster relief, or contingency activities if it does not receive other tasking(s). In these cases, coordinate with the supported unified command.

§ 813.7 Readiness reporting.

All Air Force units assigned a DOC statement report readiness status through the SORTS process. See AFI 10–201, Status of Resources and Training System, for specific information and reporting criteria.

SUBCHAPTER C—PUBLIC RELATIONS [RESERVED]

SUBCHAPTER D—CLAIMS AND LITIGATION

PART 842—ADMINISTRATIVE CLAIMS

Sec.
842.0 Scope.

Subpart A—General Information

842.1 Scope of this subpart.
842.2 Definitions.
842.3 Claims authorities.
842.4 Where to file a claim.
842.5 Claims forms.
842.6 Signature on the claim form.
842.7 Who may file a claim.
842.8 Insured claimants.
842.9 Splitting a claim.

Subpart B—Functions and Responsibilities

842.10 Scope of this subpart.
842.11 Air Force claims organization.
842.12 HQ USAF claims responsibility.
842.13 Staff Judge Advocates' responsibility.
842.14 Claims and assistant claims officers.

Subpart C—Claims Under Article 139, Uniform Code of Military Justice (UCMJ) (10 U.S.C. 939)

842.15 Scope of this subpart.
842.16 Definitions.
842.17 Claims payable.
842.18 Claims not payable.
842.19 Limiting provisions.
842.20 Filing a claim.

Subpart D—Personnel Claims (31 U.S.C. 3701, 3721)

842.21 Scope of this subpart.
842.22 Definitions.
842.23 Delegations of authority.
842.24 Filing a claim.
842.25 Partial payments.
842.26 Statute of limitations.
842.27 Who may file a claim.
842.28 Who are proper claimants.
842.29 Who are not proper claimants.
842.30 General provisions.
842.31 Claims payable.
842.32 Claims not payable.
842.33 Reconsideration of a claim.
842.34 Right of subrogation, indemnity, and contribution.
842.35 Depreciation and maximum allowances.

Subpart E—Carrier Recovery Claims

842.36 Scope of this subpart.
842.37 Definitions.
842.38 Delegations of authority.
842.39 Statute of limitations.

Subpart F—Military Claims Act (10 U.S.C. 2733)

842.40 Scope of this subpart.
842.41 Definitions.
842.42 Delegations of authority.
842.43 Filing a claim.
842.44 Advance payments.
842.45 Statute of limitations.
842.46 Who may file a claim.
842.47 Who are proper claimants.
842.48 Who are not proper claimants.
842.49 Claims payable.
842.50 Claims not payable.
842.51 Applicable law.
842.52 Appeal of final denials.
842.53 Right of subrogation, indemnity, and contribution.
842.54 Attorney fees.

Subpart G—Foreign Claims (10 U.S.C. 2734)

842.55 Scope of this subpart.
842.56 Definitions.
842.57 Delegations of authority.
842.58 Filing a claim.
842.59 Advance payments.
842.60 Statute of limitations.
842.61 Who may file a claim.
842.62 Who are proper claimants.
842.63 Who are not proper claimants.
842.64 Payment criteria.
842.65 Claims not payable.
842.66 Applicable law.
842.67 Reconsideration of final denials.
842.68 Right of subrogation, indemnity, and contribution.

Subpart H—International Agreement Claims (10 U.S.C. 2734a and 2734b)

842.69 Scope of this subpart.
842.70 Definitions.
842.71 Delegations of authority.
842.72 Filing a claim.

Subpart I—Use of Government Property Claims (10 U.S.C. 2737)

842.73 Scope of this subpart.
842.74 Definitions.
842.75 Delegations of authority.
842.76 Filing a claim.
842.77 Statute of limitations.
842.78 Claims payable.
842.79 Claims not payable.
842.80 Reconsideration of final denial.
842.81 Settlement agreement.

Subpart J—Admiralty Claims (10 U.S.C. 9801–9804, 9806; 46 U.S.C. 740)

842.82 Scope of this subpart.
842.83 Definitions.
842.84 Delegations of authority.
842.85 Reconsidering claims against the United States.

Subpart K—Claims Under the Federal Tort Claims Act (28 U.S.C. 1346(b), 2402, 2671, 2672, 2674–2680)

842.86 Scope of this subpart.
842.87 Definitions.
842.88 Delegations of authority.
842.89 Statute of limitations.
842.90 Reconsideration of final denials.
842.91 Settlement agreements.

Subpart L—Property Damage Tort Claims in Favor of the United States (31 U.S.C. 3701, 3711–3719)

842.92 Scope of this subpart.
842.93 Delegations of authority.
842.94 Assertable claims.
842.95 Non-assertable claims.
842.96 Asserting the claim.
842.97 Referring a claim to the US Attorney or the Department of Justice.
842.98 Statute of limitations.
842.99 Compromise, termination, and suspension of collection.

Subpart M—Claims Under the National Guard Claims Act (32 U.S.C. 715)

842.100 Scope of this subpart.
842.101 Definitions.
842.102 Delegations of authority.
842.103 Filing a claim.
842.104 Advance payments.
842.105 Statute of limitations.
842.106 Who may file a claim.
842.107 Who are proper claimants.
842.108 Who are not proper claimants.
842.109 Claims payable.
842.110 Claims not payable.
842.111 Applicable law.
842.112 Appeal of final denials.
842.113 Government's right of subrogation, indemnity, and contribution.
842.114 Attorney fees.

Subpart N—Hospital Recovery Claims (42 U.S.C. 2651–2653)

842.115 Scope of this subpart.
842.116 Definitions.
842.117 Delegations of authority.
842.118 Assertable claims.
842.119 Nonassertable claims.
842.120 Asserting the claim.
842.121 Referring a claim to the US Attorney.
842.122 Statute of limitations.
842.123 Recovery rates in government facilities.
842.124 Waiver and compromise of United States interest.
842.125 Reconsideration of a waiver for undue hardship.

Subpart O—Nonappropriated Fund Claims

842.126 Scope of this subpart.
842.127 Definitions.
842.128 Delegations of authority.
842.129 Settlement of claims against NAFIs.
842.130 Payment of claims against NAFIs.
842.131 Tort and tort type claims.
842.132 Claims by NAFI employees.
842.133 Claims by customers, members, participants, or authorized users.
842.134 Claims in favor of NAFIs.
842.135 Advance payments.
842.136 Claim payments and deposits.

Subpart P—Civil Air Patrol Claims (5 U.S.C. 8101(1)(B), 8102(a), 8116(c), 8141; 10 U.S.C. 9441, 9442; 36 U.S.C. 201–208)

842.137 Scope of this subpart.
842.138 Definitions.
842.139 Delegations of authority.
842.140 Proper claimants.
842.141 Improper claimants.
842.142 Claims payable.
842.143 Claims not payable.

Subpart Q—Advance Payments (10 U.S.C. 2736)

842.144 Scope of this subpart.
842.145 Delegation of authority.
842.146 Who may request.
842.147 When authorized.
842.148 When not authorized.
842.149 Separate advance payment claims.
842.150 Liability for repayment.

AUTHORITY: Sec. 8013, 100 Stat. 1053, as amended; 10 U.S.C. 8013, except as otherwise noted.

SOURCE: 55 FR 2809, Jan. 29, 1990, unless otherwise noted.

NOTE: Air Force Regulations are available through the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

This part is derived from Air Force Regulation 112–1, Claims and Tort Litigation.

§ 842.0 Scope.

This part establishes standard policies and procedures for administratively processing claims resulting from Air Force activities and for which the Air Force has assigned responsibility; tells how to present, process, and settle claims.

Subpart A—General Information

§ 842.1 Scope of this subpart.

This subpart explains terms used in this part. It states basic Air Force claims policy and identifies proper claimants.

§ 842.2 Definitions.

(a) *Authorized agent*. Any person or corporation, including a legal representative, empowered to act on a claimant's behalf.

(b) *Civilian personnel*. Civilian employees of the Air Force who are paid from appropriated or nonappropriated funds. They include prisoners of war, interned enemy aliens performing paid labor, and volunteer workers except for claims under the Military Personnel and Civilian Employees' Claims Act.

(c) *Claim*. Any signed written demand made on or by the Air Force for the payment of a sum certain. It does not include any obligations incurred in the regular procurement of services, supplies, equipment, or real estate. An oral demand made under Article 139, Uniform Code of Military Justice (UCMJ) is sufficient.

(d) *Claimant*. An individual, partnership, association, corporation, country, state, territory, or its political subdivisions, and the District of Columbia. The US Government or any of its instrumentalities may be a claimant in admiralty, tort, carrier recovery and hospital recovery claims in favor of the United States.

(e) *Geographic area of claims responsibility*. The base Staff Judge Advocate's (SJA's) jurisdiction for claims. CONUS jurisdictional areas are designated by HQ USAF/JACC on maps distributed to the field. HQ PACAF, HQ USAFE, and HQ 9AF SJAs designate these areas within their jurisdictions. DOD assigns areas of single service responsibility to each military department.

(f) *HQ USAF/JACC*. Claims and Tort Litigation Staff, Office of The Judge Advocate General, Headquarters, United States Air Force, Building 5683, Bolling AFB, DC 20332–6128.

(g) *HQ 9AF*. Headquarters Ninth Air Force, Shaw AFB, SC 29152–5002.

(h) *Owner*. A holder of a legal title or an equitable interest in certain property. Specific examples include:

(1) *For real property*. The mortgagor, and the mortgagee if that individual can maintain a cause of action in the local courts involving a tort to that specific property.

(2) *For personal property*. A bailee, lessee, mortgagee and a conditional vendee. A mortgagor, conditional vendor, or someone else other than the owner, who has the title for purposes of security are not owners.

(i) *HQ PACAF*. Headquarters, Pacific Air Forces, Hickam AFB, HI 96853–5001.

(j) *Personal injury*. The term "personal injury" includes both bodily injury and death.

(k) *Property damage*. Damage to, loss of, or destruction of real or personal property.

(l) *Settle*. To consider and pay, or deny a claim in full or in part.

(m) *Single Base General Court-Martial Jurisdiction (GCM)*. For claims purposes, a base legal office serving the commander who exercises GCM authority over that base, or that base and other bases.

(n) *Subrogation*. The act of assuming the legal rights of another after paying a claim or debt, for example, an insurance company (subrogee) paying its insured's (subrogor's) claim, thereby assuming the insured's right of recovery.

(o) *HQ USAFE*. Headquarters, United States Air Forces in Europe, Ramstein Air Base, Germany, APO NY 09012–5001.

[55 FR 2809, Jan. 29, 1990, as amended at 56 FR 1574, Jan. 16, 1991]

§ 842.3 Claims authorities.

(a) *Appellate authority*. The individual authorized to review the final decision of a settlement authority upon appeal or reconsideration.

(b) *Settlement authority*. The individual or foreign claims commission authorized to settle a claim upon its initial presentation.

§ 842.4 Where to file a claim.

File a claim at the base legal office of the unit or installation at or nearest to where the accident or incident occurred. If the accident or incident occurred in a foreign country where no Air Force unit is located, file the claim with the Defense Attache (DATT) or Military Assistance Advisory Group

(MAAG) personnel authorized to receive claims (DIAM 100–1 and AFR 400–45). In a foreign country where a claimant is unable to obtain adequate assistance in filing a claim, the claimant may contact the nearest Air Force SJA. The SJA then advises HQ USAF/JACC thorugh claims channels of action taken and states why the DATT or MAAG was unable to adequately assist the claimant.

§ 842.5 Claims forms.

Any signed written demand on the Air Force for a sum certain is sufficient to file a claim. The claimant should use these forms when filing a claim:

(a) *Claim processed under the Military Personnel and Civilian Employees' Claims Act*. Use AF Form 180, Claim for Loss of or Damage to Personal Property Incident to Service, or DD Forms 1842, Claim for Personal Property Against the United States, and 1844, Schedule of Property and Claim Analysis Chart, to file the claim.

(b) *Claim processed under international agreements*. Use any form specified by the host country.

(c) *Any other type claim*. Use SF 95, Claim for Damage, Injury, or Death.

§ 842.6 Signature on the claim form.

The claimant or authorized agent signs the claim form in ink using the first name, middle initial, and last name.

(a) *Claim filed by an individual*. (1) A married woman signs her name, for example, Mary A. Doe, rather than Mrs. John Doe.

(2) An authorized agent signing for a claimant shows, after the signature, the title or capacity and attaches evidence of authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative; for example, John Doe by Richard Roe, Attorney in Fact. A copy of a current and valid power of attorney, court order, or other legal document is sufficient evidence of the agent's authority.

(b) *Claim with joint interest*. Where a joint ownership or interest in real property exists, all joint owners must sign the claim form. This includes a husband and wife signing a claim if the claim is for property damage. However, only the military member or civilian employee signs the claim form for a claim under the Military Personnel and Civilian Employees' Claims Act.

(c) *Claim filed by a corporation*. (1) A corporate officer signing the form must show title or capacity and affix the corporate seal (if any) to the claim form.

(2) If the person signing the claim is other than the corporate officer they must:

(i) Attach to the claim form a certification by a proper corporate officer that the individual is an agent of the corporation duly authorized to file and settle the claim;

(ii) Affix to the claim form the corporate seal (if any) to the certification.

(d) *Claim filed by a partnership*. A partner must sign the form showing his or her title as partner and list the full name of the partnership.

§ 842.7 Who may file a claim.

(a) *Property damage*. The owner or owners of the property or their authorized agent may file a claim for property damage.

(b) *Personal injury or death*. (1) The injured person or authorized agent may file a claim for personal injury.

(2) The duly appointed guardian of a minor child or any other person legally entitled to do so under applicable local law may file a claim for a minor's personal injury.

(3) The executor or administrator of the decedent's estate or any other person legally entitled to do so under applicable local law may file a claim based on an individual's death.

(c) *Subrogation*. The subrogor (insured) and the subrogee (insurer) may file a claim jointly or individually. Pay a fully subrogated claim only to the subrogee. A joint claim must be asserted in the names of and signed by the real parties in interest. Make payment by sending a joint check to the subrogee, made payable to the subroger and subrogee. If separate claims are filed, make payment by check issued to each claimant to the extent of each undisputed interest.

§ 842.8 Insured claimants.

Insured claimants must make a detailed disclosure of their insurance coverage by stating:

(a) Their name and address.

(b) Kind, amount, and dates of coverage of insurance.

(c) Insurance policy number.

(d) Whether a claim was presented to the insurer and, if so, in what amount.

(e) Whether the insurer paid or is expected to pay the claim.

(f) The amount of any payment made or promised.

§ 842.9 Splitting a claim.

(a) A claim includes all damages accruing to a claimant by reason of an accident or incident. For example, when the same claimant has a claim for property damage and personal injury arising out of the same incident, each claim represents only a part of a single claim or cause of action. Even if local law permits filing a separate claim for property damage and for personal injury, do not settle or pay a separate or split claim without the advance approval of HQ USAF/JACC.

(b) Filing for an advance payment, and subsequently filing a claim, does not constitute splitting a claim.

(c) Process the claim of a subrogor (insured) and subrogee (insurer) for damages arising out of the same incident as a single claim where permitted. If either claim or the combined claim exceeds, or is expected to exceed, settlement limits, send it to the next higher settlement authority. Do not split subrogated claims to avoid settlement limits.

Subpart B—Functions and Responsibilities

§ 842.10 Scope of this subpart.

It sets out the claims organization within the US Air Force and describes the functions and responsibilities of the various claims offices.

§ 842.11 Air Force claims organization.

Air Force claims channels are:

(a) Continental United States (CONUS), Azores, Panama and Iceland:

(1) Headquarters US Air Force (HQ USAF).

(2) SJAs of bases, single base GCM authorities, stations and fixed installations, and commanders responsible for investigation and settlement of claims.

(b) Pacific Air Forces (PACAF) and US Air Forces, Europe (USAFE):

(1) HQ USAF.

(2) SJAs of PACAF and USAFE.

(3) SJAs of organizations exercising GCM authority.

(4) SJAs of bases, stations and fixed installations, and commanders responsible for investigating and settling claims.

(c) US Central Command (CENTCOM):

(1) HQ USAF.

(2) SJA of Headquarters Ninth Air Force (HQ 9AF).

(3) SJAs of bases, stations, and fixed installations, and commanders responsible for investigation and settlement of claims.

(d) *Maneuver and disaster claims*. Air Force Judge Advocates designated by The Judge Advocate General (TJAG) to process maneuver and disaster claims. Once appointed, judge advocates must process claims through claims channels.

[55 FR 2809, Jan. 29, 1990, as amended at 56 FR 1574, Jan. 16, 1991]

§ 842.12 HQ USAF claims responsibility.

(a) *TJAG, through the Claims and Tort Litigation Staff (HQ USAF/JACC):* (1) Establishes claims and tort litigation policies and supervises and assists all Air Force claims activities.

(2) Trains claims officers and paralegals.

(3) Settles certain claims.

NOTE: The authority specifically delegated to the Deputy Judge Advocate General to settle certain claims in no way limits the Deputy's authority to perform the duties of TJAG when so acting pursuant to 10 U.S.C. 8072.

(4) Monitors tort litigation for and against the United States arising out of Air Force activities.

(b) *HQ USAF/JACC*. (1) Supervises and inspects claims and tort litigation activities through assistance visits, special audits, and Claims Administrative Management Program (CAMP) reviews.

(2) Implements claims and tort litigation policies, issues instructions, and

provides guidance and assistance to subordinate claims offices.

(3) Recommends settlement action on claims and tort litigation to TJAG, the Secretary of the Air Force, and the United States Attorney General.

(4) Maintains liaison with the Department of Defense (DOD), Department of Justice (DOJ), and other government agencies on claims and tort litigation.

(5) Settles certain claims.

(6) Certifies or reports claims to the General Accounting Office (GAO).

(7) Prepares budget estimates for Air Force claims activities.

(8) Monitors the collection, allocation, and expenditure of Air Force claims funds.

(9) Keeps permanent records on all claims and tort litigation for which TJAG is responsible.

(10) Conducts and supervises claims training activities.

§ 842.13 Staff Judge Advocates' responsibility.

(a) *Major Command (MAJCOM).* (1) All MAJCOM SJAs, whether or not exercising claims settlement authority are responsible for the general supervision of claims activities within their commands, including:

(i) Conduct of periodic claims audits.

(ii) Support of claims teams. Members may be detailed from personnel assigned to the command to respond to natural disasters or serious incidents. If resources are not available from within the command, HQ USAF/JACC should be contacted for assistance.

(iii) Apportion claims funds allocated by HQ USAF.

(2) The PACAF, USAFE, and HQ 9AF SJA:

(i) Settles claims.

(ii) At a minimum, through assistance visits and audits, supervises claims activities of those subordinate units and organizations assigned to them for claims purposes.

(iii) Appoints members to foreign claims commissions.

(iv) Monitors international claims.

(v) Establishes and designates geographic areas of claims responsibility within the command, except for DOD designated single-service areas of responsibility.

(b) *GCM:* (1) The GCM SJA, whether or not he or she exercises claims settlement authority, is responsible for the general supervision of claims activities within the subordinate units.

(2) The GCM SJA exercising settlement authority:

(i) Settles certain claims.

(ii) Supervises directly the claims activities of their subordinate units. This includes at least assistance visits and audits for all but single base GCMs.

(c) *Base SJAs:* (1) Settle certain claims.

(2) Have primary investigative responsibility for incidents giving rise to claims that occur in their geographic area of responsibility.

(3) Notify HQ USAF/JACC through claims channels, if there is a question of which base can best investigate and process a particular claim.

§ 842.14 Claims and assistant claims officers.

(a) *Functions and responsibilities:* (1) The claims officer, under the immediate supervision of the SJA, the commander, or other appointing authority, is responsible for all claims activity of the command, organization, or unit. This includes investigating and reporting accidents, incidents, and claims.

(2) The assistant claims officer performs claims duties under the supervision of the claims officer and in the absence of the claims officer.

(b) *Appointment of claims and assistant claims officers:* (1) The Commander of each Air Force base, station, fixed installation, or separate unit appoints a claims officer in writing.

(2) The SJA appoints assistant claims officers in writing.

(c) *Qualifications of claims officers:* Claims officers are commissioned officers, designated as judge advocates of the Air Force, or civilian attorneys employed by the United States in authorized attorney positions at the office of the SJA.

(d) *Qualifications of assistant claims officers:* The assistant claims officer may be an attorney, a senior noncommissioned officer (E–7 through E–9), or a Department of the Air Force civilian employee (GS–7 or above).

Subpart C—Claims Under Article 139, Uniform Code of Military Justice (UCMJ) (10 U.S.C. 939)

§ 842.15 Scope of this subpart.

It sets out the Air Force procedures for processing Article 139, UCMJ claims.

§ 842.16 Definitions.

(a) *Appointing commander*. The commander exercising special court-martial jurisdiction over the offender is the appointing commander.

(b) *Board of officers*. One to three commissioned officers appointed to investigate a complaint of willful property damage or wrongful taking by Air Force personnel comprise a board of officers.

(c) *Property*. Property is an item that is owned or possessed by an individual or business. Property includes a tangible item such as clothing, household furnishings, motor vehicles, real property, and currency. The term does not include intangible property or items having no independent monetary worth. Items that should not be considered as property for the purpose of this part include a stock, bond, check, check book, credit card, telephone service and cable television services.

(d) *Willful damage*. Damage or destruction caused intentionally, knowingly, and purposely, without justifiable excuse is willful damage.

(e) *Wrongful taking*. Any unauthorized taking or withholding of property with intent to deprive the owner or person in lawful possession either temporarily or permanently.

§ 842.17 Claims payable.

Claims for property willfully damaged or wrongfully taken by Air Force military personnel as a result of riotous, violent, or disorderly conduct. If a claim is payable under this part and also under another part, it may be paid under this part if authorized by HQ USAF/JACC.

§ 842.18 Claims not payable.

Claims that are not payable are:

(a) Claims resulting from simple negligence.

(b) Claims for personal injury or death.

(c) Claims resulting from acts or omissions of Air Force military personnel while acting within the scope of their duty.

(d) Claims of subrogees.

(e) Claims arising from private indebtedness.

(f) Claims for reimbursement for bad checks.

§ 842.19 Limiting provisions.

(a) Submit a complaint within 90 days of the date of the incident unless the appointing commander finds good cause for the delay. Command determination of the absence of good cause is final.

(b) Assessment of damages in excess of $5,000 against an offender's pay for a single incident requires HQ USAF/JACC approval.

(c) Payment of indirect, remote, or consequential damages is not authorized.

§ 842.20 Filing a claim.

Claimant complains (orally or in writing) to the commander of a military organization or unit of the alleged offending member or members or to the commander of the nearest military installation. However, the complainant need not request a sum certain in writing, before settlement is made.

Subpart D—Personnel Claims (31 U.S.C. 3701, 3721)

§ 842.21 Scope of this subpart.

It explains how to settle and pay claims under the Military Personnel and Civilian Employees' Claims Act for incident to service loss and damage of personal property. These claims are paid according to this subpart even when another subpart may also apply.

§ 842.22 Definitions.

(a) *Act of God*. An act occasioned exclusively by violence of nature, such as flood, earthquake, tornado, typhoon or hurricane, that is unanticipated and over which no one has any control.

(b) *Military installation*. A facility used to serve a military purpose and used or controlled by the Air Force or

any other Department of Defense (DOD) element.

(c) *Other authorized places:* (1) Any place authorized, or apparently authorized by the government to receive, hold, or store personal property, such as offices, warehouses, baggage holding areas, hospitals.

(2) Any area on a military installation designated for parking or storing vehicles.

(3) A recreation area or any real estate the Air Force or any other DOD element uses or controls.

(d) *Personal property*. Tangible property an individual owns, including but not limited to household goods, unaccompanied baggage, privately owned vehicles (POV), and mobile homes.

(e) *Quarters:* (1) Housing the government assigns or otherwise provides in kind to the claimant, including substandard housing and trailers, when the claimant pays the government a fixed rental while drawing basic allowance for quarters (BAQ).

(2) Privately owned mobile or manufactured homes parked on base in spaces the government provides.

(3) Transient housing accommodations, wherever located, such as, hotels, motels, guest houses, transient dormitories, or other lodgings the government furnishes or contracts for.

(4) Housing accommodations outside the United States which the claimant occupies according to local policies and procedures which were not assigned by or otherwise provided for by the U.S. Government. Quarters do not include housing occupied by foreign indigenous employees.

(5) Garages, carports, driveways, and parking lots assigned to quarters the government provides for the occupants of the quarters to use.

(6) Street parking:

(i) At quarters.

(ii) In the immediate vicinity of quarters.

(iii) Reserved parking assigned to offbase housing accommodations overseas.

(7) The area immediately adjacent to quarters when used for storage of items not commonly stored in living areas, for example, boats, motorcycles, motorbikes, bicycles, lawn mowers, garden equipment, and outdoor furniture.

(f) *Reconsideration*. The original or a higher settlement authority's review of a prior settlement action.

(g) *Small claim*. A claim for $1,000 or less.

(h) *Unusual Occurrence*. Something not expected to happen in the normal course of events.

§ 842.23 Delegations of authority.

(a) *Settlement authority:* (1) These individuals have been delegated the authority to settle claims payable for $25,000 or less if the claim arose before 31 October 1988, or $40,000 or less if the claim arose on or after 31 October 1988, and to deny claims in any amount:

(i) The Judge Advocate General (TJAG).

(ii) The Deputy Judge Advocate General.

(iii) The Director of Civil Law.

(iv) The Chief, Deputy Chief, and Branch Chiefs, Claims and Tort Litigation Staff.

(2) The SJAs of HQ USAFE, HQ PACAF, and 9 AF (for claims arising out of HQ CENTCOM) have delegated authority to settle claims payable, and to deny claims filed for $25,000 or less.

(3) The SJAs of single base GCMs and the SJAs of GCMs within PACAF and USAFE have delegated authority to settle claims payable, and to deny claims filed for $15,000 or less.

(4) SJAs of each Air Force Base, station, and fixed installation have been delegated the authority to settle claims payable, and deny claims filed for $10,000 or less.

(b) *Redelegation of authority*. A settlement authority may redelegate the authority, in writing, to a subordinate judge advocate or civilian attorney.

(c) *Reconsideration authority*. A settlement authority has the same authority specified in a above. However, with the exception of TJAG, a settlement authority may not deny a claim on reconsideration that it, or its delegate, had previously denied.

(d) *Authority to reduce, withdraw, and restore settlement authority*. Any superior settlement authority may reduce, withdraw, or restore delegated authority.

[55 FR 2809, Jan. 29, 1990, as amended at 56 FR 1574, Jan. 16, 1991]

§ 842.24 Filing a claim.

(a) *How and when to file a claim.* A claim is filed when a federal military agency receives from a claimant or duly authorized agent a properly completed AF Form 180, DD Form 1842 or other written and signed demand for a specified sum of money.

(b) *Amending a claim.* A claimant may amend a claim at any time prior to the expiration of the statute of limitations by submitting a signed amendment. The settlement authority adjudicates and settles or forwards the amended claim as appropriate.

(c) *Separate claims.* The claimant files a separate claim for each incident which caused a loss. For transportation claims, this means a separate claim for each shipment.

§ 842.25 Partial payments.

Upon request of a claimant, a settlement authority may make a partial payment in advance of final settlement when a claimant experiences personal hardship due to extensive property damage or loss. Examples where partial payments are appropriate include fires and sunken transport ships. Partial payments are made in this manner:

(a) If a claim for only part of the loss is submitted and is readily provable, pay it up to the amount of the settlement authority. (The claimant may later amend the claim for the remainder of the loss.) If the total payable amount of the claim exceeds the payment limits of the settlement authority, send it with recommendations through claims channels to the proper settlement authority.

(b) When the total claim is submitted and the amount payable exceeds the settlement authority, pay a partial payment within the limits of settlement authority and send the claim, with recommendations, through claims channels to the proper settlement authority.

§ 842.26 Statute of limitations.

(a) The claimant must file the claim in writing within 2 years after it accrues. It accrues when the claimant discovered or reasonably should have discovered the full extent of the property damage or loss. For transportation losses, the claim usually accrues on the date of delivery.

(b) To compute the statutory period, the incident date is excluded and the day the claim was filed is included.

(c) Consider a claim filed after the statute has run if both of the following are present:

(1) The United States is at war or in an armed conflict when the claim accrues, or the United States enters a war or armed conflict after the claim accrues. Congress or the President establishes the beginning and end of war or armed conflict. A claimant may not file a claim more than 2 years after the war or armed conflict ends.

(2) Good cause is shown. A claimant may not file a claim more than 2 years after the good cause ceases to exist.

§ 842.27 Who may file a claim.

A claim may be filed by the:

(a) Property owner.

(b) Authorized agent with a power of attorney.

(c) Property owner's survivors, who may file in this order:

(1) Spouse.

(2) Children.

(3) Father or mother, or both.

(4) Brothers or sisters, or both.

§ 842.28 Who are proper claimants.

Proper claimants are:

(a) Active duty Air Force military personnel.

(b) Civilian employees of the Air Force who are paid from appropriated funds.

(c) DOD school teachers and school administrative personnel who are provided logistic and administrative support by an Air Force installation commander.

(d) Air Force Reserve (AFRES) and Air National Guard (ANG) personnel when performing active duty, full-time National Guard duty, or inactive duty training, ANG technicians under 32 U.S.C. 709.

(e) Retired or separated Air Force military personnel who suffer damage or loss resulting from the last storage or movement of personal property, or for claims accruing before retirement or separation.

(f) AFROTC cadets while on active duty for summer training.

(g) United States Air Force Academy cadets.

§ 842.29 Who are not proper claimants.

The following individuals are not proper claimants:

(a) Subrogees and assignees of proper claimants, including insurance companies.

(b) Conditional vendors and lienholders.

(c) Non-Air Force personnel, including American Red Cross personnel, United Services Organization (USO) performers, employees of government contractors, and Civil Air Patrol (CAP) members.

(d) AFROTC cadets who are not on active duty for summer training.

(e) Active duty military personnel and civilian employees of a military service other than the Air Force.

(f) DOD employees who are not assigned to the Air Force.

(g) Army and Air Force Exchange Service (AAFES) employees and other employees whose salaries are paid from nonappropriated funds (see subpart O).

(h) Military personnel of foreign governments.

§ 842.30 General provisions.

Payable claims must be for:

(a) Personal property which is reasonable or useful under the circumstances of military service.

(b) Loss, damage, destruction, confiscation, or forced abandonment which is incident to service.

(c) Losses that are not collectable from any other source, including insurance and carriers.

(d) Property that is owned by the claimants, their immediate families, or borrowed for their use.

(e) Losses occurring without the claimants' negligence.

§ 842.31 Claims payable.

Claims may be paid for:

(a) *Transportation or storage loss:* (1) Pay for property damage or loss incident to:

(i) Transportation under orders, whether it was in the possession of the government, carrier, storage warehouse, or other government contractor. This includes Do-It-Yourself (DITY) moves.

(ii) Travel under orders, including temporary duty (TDY).

(iii) Travel on a space available basis on a military aircraft, vessel, or vehicle.

(2) Pay for property essential to everyday use, if the claimant has replaced the items that he or she reported as missing. Essential items may be paid for even if someone locates the property before the claimant files the claim.

(b) *Losses at quarters and other authorized places*—(1) *In the United States (including U.S. territories and possessions).* Pay for personal property damage or loss, to include food spoilage, which is caused by fire, explosion, theft, vandalism, typhoon, hurricane, unusual occurrences or power outages which last for an extended period of time. The claimant must be free of negligence.

(i) Claims for damage or loss caused by other acts of god are not paid except in those instances where the geographic area has been declared to be a federal disaster area or HQ USAF/JACC has determined that payment is appropriate because the severity of the act of god was truly extraordinary.

(ii) In some areas, extreme weather, such as severe lightning storms, hail, or high winds, occur routinely. Damage claims from these storms are normally not paid. Failure to take reasonable care in protecting property from such known hazards may be negligence. These types of claims would include pitted windshields, dents, chipped paint on vehicles, and lightning damage to television sets, stereos, computer components, video recorders, and other electrical appliances.

(2) *Outside the United States.* Pay for personal property damage or loss, to include food spoilage, which is caused by fire, explosion, theft, vandalism, acts of god, unusual occurrences, or power outages which last for an extended period of time. The claimant must be free of negligence. The SJA must make an affirmative determination that the act of god or unusual occurrence was truly extraordinary.

(c) *Privately owned vehicles (POV).* Pay for damage to or loss of POVs caused by government negligence under subpart F or K. Pay under this subpart for damage or loss incident to:

(1) Theft of POVs or their contents, or vandalism to parked POVs:

(i) Anywhere on a military installation.

(ii) At offbase quarters overseas.

(iii) At other authorized places.

(2) Government shipment:

(i) To or from oversea areas incident to PCS.

(ii) On a space available reimbursable basis.

(iii) As a replacement vehicle under the provisions of the Joint Travel Regulations (JTR).

(3) Authorized use for government duty other than PCS moves. The owner must have specific advance permission of the appropriate supervisor or official. Adequate proof of the permission and of nonavailability of official transportation must be provided prior to paying such claims. Claims arising while the claimant is deviating from the principal route or purpose of the trip should not be paid, but claims occurring after the claimant returns to the route or purpose should be paid. Travel between quarters and place of duty, including parking, is not authorized use for government duty.

(4) Paint spray, smokestack emission, and other similar operations by the Air Force on a military installation caused by a contractor's negligence. (Process the claim under subpart F or K, if government negligence causes such losses.) If a contractor's operation caused the damage:

(i) Refer the claim first to the contractor for settlement.

(ii) Settle the claim under this subpart if the contractor does not pay it or excessively delays payment, and assert a claim against the contractor.

(d) *Damage to mobile or manufactured homes and contents in shipment.* Pay such claims if there is no evidence of structural or mechanical failure for which the manufacturer is responsible.

(e) *Borrowed property.* Pay for loss or damage to property claimants borrow for their use. Either the borrower or lender, if proper claimants, may file a claim. Do not pay for property borrowed to accommodate the lender, i.e., such as to avoid weight or baggage restrictions in travel.

(f) *Marine or aircraft incident.* Pay claims of crewmembers and passengers who are in duty or leave status at the time of the incident. Payable items include jettisoned baggage, clothing worn at the time of an incident, and reasonable amounts of money, jewelry, and other personal items.

(g) *Combat losses.* Pay for personal property losses, whether or not the United States was involved, due to:

(1) Enemy action.

(2) Action to prevent capture and confiscation.

(3) Combat activities.

(h) *Civil activity losses.* Pay for losses resulting from a claimant's acts to:

(1) Quell a civil disturbance.

(2) Assist during a public disaster.

(3) Save human life.

(4) Save government property.

(i) *Confiscated property.* Pay for losses when:

(1) A foreign government unjustly confiscates property.

(2) An unjust change or application of foreign law forces surrender or abandonmnet of property.

(j) *Clothing and accessories worn on the person.* Pay claims for damage to eyeglasses, hearing aids, and dentures the government did not supply, when the damage results from actions beyond the normal risks associated with daily living and working. Claimants assume the risk of normal wear and tear, and their negligence bars payment of the claim.

(k) *Money losses.* Pay claims for loss of money when the losses are due to theft from quarters, other authorized places, or from the person, if the claimant was required to be in the area and could not avoid the theft by due care. As a general rule, $200.00 is reasonable to have in quarters, and $100.00 is reasonable to have on the person unless:

(1) The money was in a bona fide coin collection.

(2) The claimant can justify possession of the money for a PCS move, extended TDY, vacation, extensive shopping trip, or similar circumstances. The claimant must show a good reason why the money had not been deposited in a bank or converted into travelers checks or a money order.

(3) Local commercial facilities are not available or because US personnel do not generally use such facilities.

§ 842.32 Claims not payable.

A claim is not payable if:

(a) It is not incident to the claimant's service.

(b) The loss or damage is caused in whole or in part by the negligence or wrongful act of the claimant, the claimant's spouse, agent, or employee.

(c) It is a subrogation or assigned claim.

(d) The loss is recovered or recoverable from an insurer or other source. When a loss is recovered or is recoverable:

(1) The amount payable by insurance should be deducted if an insurer denied a claim because a claimant failed to report the loss or to file a timely claim under the policy. The claim should be paid if the settlement authority determines the claimant had good cause for not filing with the insurer, or

(2) The amount which the Air Force cannot recover from a carrier because the claimant failed to give timely notice of loss or damage should be subtracted from the settlement unless the claimant shows good cause for failure to give notice.

(e) It is intangible property including bank books, promissory notes, stock certificates, bonds, baggage checks, insurance policies, checks, money orders, travelers checks and credit cards.

(f) It is government property, including issued clothing items carried on an individual issue supply account. (Clothing not carried on an individual issue supply account which is stolen or clothing lost or damaged in transit may be considered as a payable item when claimed.)

(g) It is enemy property.

(h) It is a loss within the United States at offbase quarters the government did not provide.

(i) It is damage to real property.

(j) It is an appraisal fee, unless the settlement authority requires one to adjudicate the claim. HQ USAF/JACC must authorize payment for an appraisal fee of more than $100.

(k) It is property acquired or shipped for persons other than the claimant or the claimant's immediate family; however, a claim for property acquired for bona fide gifts may be paid.

(l) It is an article held for sale, resale, or used primarily in a private business.

(m) It is an item acquired, possessed, shipped, or stored in violation of any U.S. Armed Force directive or regulation. This includes an automobile for which a member fails to comply with base registration or insurance regulations. A claim must not be paid if one or more of these factors exist:

(1) The loss was the type the regulation or directive intended to prevent.

(2) The violation was willful or in defiance of authority, rather than minor or technical in nature.

(3) The violation either undermined discipline or adversely affected command welfare.

(n) It is an item fraudulently claimed. Deny payment for an item when investigation shows the claimant has intentionally falsified the value, condition, extent of damage, or repair cost of it. The claim file must show clear intent to defraud. A mere mistake is not a fraud.

(o) It is for charges for labor performed by the owner or immediate family member.

(p) It is for financial loss due to changed or cancelled orders.

(q) It is for expenses of enroute repair of a mobile or manufactured home.

(r) It is a loss of use of personal property.

(s) It is an attorney or agent fee.

(t) It is the cost of preparing a claim, other than estimate fees.

(u) It is an inconvenience expense, such as food, lodging, and transportation costs due to delay in delivery of household goods or travel to port to deliver or pick up a vehicle.

(v) It is a loss of, or damage to POV driven during PCS.

(w) It is a personal property insurance premium.

(x) It is a claim for a thesis or other similar papers, except for the cost of materials.

(y) It is damage to, or loss of a rental vehicle which TDY or PCS orders authorized. These claims may be payable through Accounting and Finance as a travel expense.

(z) It is a cost to relocate a telephone or mobile or manufactured home due to a government ordered quarters move.

The member submits such claims to the commander directing the move for payment from other Operation and Maintenance (O&M) funds.

(aa) It is for damage to or loss of property stored at the owner's expense unless the claimant's duty made storage necessary.

(bb) It is for damage to clothing and accessories caused by routine wrinkles.

(cc) It is hit-and-run damage to POVs.

(dd) It is for damage to clothing and accessories caused by contact with office furniture or getting in or out of a government vehicle unless the damage was caused by an unknown defect.

§ 842.33 Reconsideration of a claim.

A claimant may request reconsideration of an initial settlement or denial of a claim. The claimant sends the request in writing, to the settlement authority within a reasonable time following the initial settlement or denial. Sixty days is considered a reasonable time, but the settlement authority may waive the time limit for good cause.

(a) The original settlement authority reviews the reconsideration request. The settlement authority sends the entire claim file with recommendations and supporting rationale to the next higher settlement authority if all relief the claimant requests is not granted.

(b) The decision of the higher settlement authority is the final administrative action on the claim.

§ 842.34 Right of subrogation, indemnity, and contribution.

The Air Force becomes subrogated to the rights of the claimant upon settling a claim. The Air Force has the rights of contribution and indemnity permitted by the law of the situs or under contract. The Air Force does not seek contribution or indemnity from US military personnel or civilian employees whose conduct in scope of employment gave rise to government liability.

§ 842.35 Depreciation and maximum allowances.

The military services have jointly established the "Allowance List-Depreciation Guide" to determine values for most items and to limit payment for some categories of items.

Subpart E—Carrier Recovery Claims

§ 842.36 Scope of this subpart.

This subpart explains how to assert and settle claims against carriers, warehousemen, and contractors for loss and damage to personal property.

§ 842.37 Definitions.

(a) *Bill of lading*. A contract for movement and delivery of goods.

(1) Carriers issue commercial bills of lading.

(2) Transportation officers issue government bills of lading (GBL). GBLs include the terms and conditions of commercial bills of lading with certain exceptions.

(3) The GBL is all of the following:

(i) A receipt for goods tendered to a carrier.

(ii) A contract.

(iii) A document authorizing collection of transportation bills the carrier presents.

(b) *Carrier*. Any moving company, personal property forwarder, or freight forwarder holding a certificate or permit issued by a federal or state regulatory agency or approved by the Department of Defense for international shipments.

(c) *Military Traffic Management Command (MTMC)*. The Department of Defense management agency for military traffic, land transportation, and common user ocean terminals. Among other responsibilities, MTMC manages the DOD household goods moving and storage program worldwide. The Army has single service responsibility for MTMC.

(d) *Regional Storage Management Office (RSMO)*. The MTMC office responsible for negotiating and administering all storage contracts within a geographical area. The contracting officer of each RSMO makes involuntary collections of nontemporary storage loss and damage claims.

(e) *Net weight*. The weight of the fully-loaded van or shipping crate (gross weight), less the weight of the empty van or shipping crate (tare weight).

(f) *Nontemporary storage (NTS)*. All authorized storage not in connection with a GBL. NTS usually exceeds 180 days and normally includes packing and shipping of household goods to the warehouse.

(g) *Storage in transit (SIT)*. Storage of a shipment by a carrier at origin, enroute, or at destination. SIT is initially limited to 90 days. The transportation officer may extend it to a maximum of 180 days.

(h) *Tender of service*. A carrier's offer to do business with the Department of Defense, including the terms and conditions of the agreement. The Personal Property Traffic Management Regulation (PPTMR), DOD Regulation 4500.34, appendix A, contains this agreement.

§ 842.38 Delegations of authority.

(a) *Settlement authority:* (1) These individuals have delegated authority to settle, compromise, suspend, or terminate action on claims for $20,000 or less and to accept full payment on any claim:

(i) The Judge Advocate General.

(ii) The Deputy Judge Advocate General.

(iii) The Director of Civil Law.

(iv) Chief, Deputy Chief, and Branch Chiefs, Claims and Tort Litigation Staff.

(v) The SJAs of HQ PACAF, HQ USAFE, and HQ 9AF (for HQ CENTCOM).

(2) These individuals have delegated authority to settle, compromise, suspend, or terminate action on claims for $15,000 or less and to accept full payment on any claim:

(i) SJAs of GCMs in PACAF and USAFE.

(ii) SJAs of single base GCMs.

(3) SJAs of each Air Force base, station, or fixed installation have delegated authority to settle, compromise, suspend, or terminate action on claims for $10,000 or less and to accept full payment on any claim.

(b) *Redelegation of authority*. An individual with settlement authority may redelegate this authority, in writing, to a subordinate judge advocate or civilian attorney.

(c) *Authority to reduce, withdraw, or restore settlement authority*. Any superior settlement authority may reduce, withdraw, or restore settlement authority.

§ 842.39 Statute of limitations.

(a) International commercial air shipments. The government must file suit within 2 years after the delivery date. The period for notifying these carriers of loss or damage is 3 days for luggage, and 7 days for other goods. Setoff is not possible in these cases. Uncollectible claims are sent to HQ USAF/JACC within 6 months from the date of delivery.

(b) *All other CR claims*. The government must file suit within 6 years after the cause of action accrues. It accrues when a responsible US official, service member, or employee knew or reasonably should have known the material facts that caused the claimed loss. The requirement to file a claim within 9 months under commercial bills of lading does not apply to GBLs.

Subpart F—Military Claims Act (10 U.S.C. 2733)

§ 842.40 Scope of this subpart.

This subpart explains how to settle claims made against the United States for property damage, personal injury, or death caused by military personnel or civilian employees of the Air Force acting in the scope of their employment or otherwise incident to the Air Force's noncombat activities.

§ 842.41 Definitions.

(a) *Appeal*. A request by the claimant or claimant's authorized agent to reevaluate the final decision. A request for reconsideration and an appeal are the same for the purposes of this subpart.

(b) *Final denial*. A letter mailed from the settlement authority to the claimant or authorized agent advising the claimant that the Air Force denies the claim.

(c) *Noncombat activity*. Activity, other than combat, war or armed conflict, that is particularly military in character and has little parallel in the civilian community.

§ 842.42 Delegations of authority.

(a) *Settlement authority:* (1) The Secretary of the Air Force has delegated authority to:

(i) Settle claims for $100,000 or less.

(ii) Settle claims for more than $100,000, paying the first $100,000 and reporting the excess to the General Accounting Office for payment.

(iii) Deny a claim in any amount.

(2) The Judge Advocate General has delegated authority to settle claims for $100,000 or less and deny claims in any amount.

(3) The following individuals have delegated authority to settle claims for $25,000 or less and deny claims in any amount:

(i) The Deputy Judge Advocate General.

(ii) The Director of Civil Law.

(iii) The Chief, Deputy Chief and Branch Chiefs, Claims and Tort Litigation Staff.

(4) The SJA of 9AF for CENTCOM, and the SJAs of PACAF and USAFE have delegated authority to settle claims payable or deny claims filed for $25,000 or less.

(5) SJAs of single base GCMs, and GCMs in PACAF and USAFE, and each Air Force base, station, or fixed installation have delegated authority to settle claims payable, or deny claims filed for $15,000 or less.

(b) *Redelegation of authority*. A settlement authority may redelegate his or her authority for claims not exceeding $25,000, to a subordinate judge advocate or civilian attorney in writing.

(c) *Appellate authority*. Upon appeal, a settlement authority has the same authority specified above. However, no appellate authority below the Office of the Secretary of the Air Force may deny an appeal of a claim it had previously denied.

(d) *Authority to reduce, withdraw, and restore settlement authority*. Any superior settlement authority may reduce, withdraw, or restore delegated authority.

(e) *Settlement negotiations*. A settlement authority may settle a claim in any sum within its delegated settlement authority, regardless of the amount claimed. Send uncompromised claims in excess of the delegated authority to the level with settlement authority. Unsuccessful negotiations at one level do not bind higher authority.

(f) *Special exceptions*. Do not settle claims for the following without HQ USAF/JACC approval:

(1) Legal malpractice.

(2) On the job personal injury or death of an employee of a government contractor or subcontractor.

(3) Assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution committed by an investigative or law enforcement officer.

(4) On-base animal bite cases.

(5) Personal injury from asbestos or radon.

(6) Claims based upon an act or omission of an employee of the government, exercising due care, in the execution of a statute or regulation.

(7) Claims based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the government.

(8) Claims for damage to property of a state, commonwealth, territory, or the District of Columbia caused by ANG personnel engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, or 505 who are assigned to a unit maintained by that state, commonwealth, territory or the District of Columbia.

(9) Claims not payable because payment is not in the best interests of the United States, is contrary to public policy, or is otherwise contrary to the basic intent of the MCA.

(10) Claims presented by a national, or a corporation controlled by a national, of a country at war or engaged in armed conflict with the United States, or any country allied with such enemy country.

(11) Medical malpractice.

[55 FR 2809, Jan. 29, 1990, as amended at 56 FR 1574, Jan. 16, 1991]

§ 842.43 Filing a claim.

(a) *How and when filed*. A claim is filed when a federal military agency receives from a claimant or duly authorized agent a properly completed Standard Form 95 or other signed and written demand for money damages in a

sum certain. A claim belonging to another agency is promptly transferred to that agency.

(b) *Amending a claim.* A claimant may amend a claim at any time prior to final action. To amend a claim, the claimant or his or her authorized agent must submit a written, signed demand.

§ 842.44 Advance payments.

Subpart Q sets forth procedures for advance payments.

§ 842.45 Statute of limitations.

(a) A claim must be filed in writing within 2 years after it accrues. It accrues when the claimant discovers or reasonably should have discovered the existence of the act that resulted in the claimed loss. The same rules governing accrual pursuant to the Federal Tort Claims Act should be applied with respect to the Military Claims Act.

(b) The statutory time period excludes the day of the incident and includes the day the claim was filed.

(c) Consider claims filed after the statute has run when:

(1) The United States is at war or in an armed conflict when the claim accrues, or

(2) The United States enters a war or armed conflict after the claim accrues, and

(3) Good cause is shown. A claim is barred by the statute of limitations if it is filed more than 2 years after the good cause ceases to exist or the war or armed conflict ends. Congress or the President establishes the beginning and end of war or armed conflict.

§ 842.46 Who may file a claim.

(a) Owners of the property or their authorized agents may file claims for property damage.

(b) Injured persons or their duly authorized agents may file claims for personal injury.

(c) Duly appointed guardians of minor children or any other persons legally entitled to do so under applicable local law may file claims for minors' personal injuries.

(d) Executors or administrators of a decedent's estate or another person legally entitled to do so under applicable local law, may file claims based on:

(1) An individual's death.

(2) A cause of action surviving an individual's death.

(e) Insurers with subrogation rights may file claims for losses paid in full by them. The parties may file claims jointly or individually, to the extent of each party's interest, for losses partially paid by insurers with subrogation rights.

(f) Authorized agents signing claims show their title or legal capacity and present evidence of authority to present the claims.

§ 842.47 Who are proper claimants.

(a) Citizens and inhabitants of the United States.

(b) U.S. military personnel and civilian employees.

NOTE: These personnel are not proper claimants for personal injury or death incident to service.

(c) Persons in foreign countries who are not inhabitants of the foreign country.

(d) States, state agencies, counties, or municipalities, or their political subdivisions.

(e) Prisoners of war or interned enemy aliens.

NOTE: These individuals are proper claimants for personal property damage but not for personal injury.

(f) Property owners, their representatives, and those with certain legal relationships with the record owner, including mortgagors, mortgagees, trustees, bailees, lessees and conditional vendees.

(g) Subrogees to the extent they have paid for the claim in question.

§ 842.48 Who are not proper claimants.

(a) Governments of foreign nations, their agencies, political subdivisions, or municipalities.

(b) Agencies and departments of the U.S. Government.

(c) Nonappropriated fund instrumentalities.

(d) Subrogees of § 842.48(a), (b), and (c) of this part.

(e) Inhabitants of foreign countries.

§ 842.49 Claims payable.

(a) Claims arising from negligent or wrongful acts or omissions committed by United States military or civilian

personnel while acting in the scope of their employment.

(b) Claims arising from noncombat activities of the United States, whether or not such injuries of damages arose out of the negligent or wrongful acts or omissions by United States military or civilian employees acting within the scope of their employment.

(c) Claims for damage to bailed property under § 842.49(a) or (b) of this part, where all of the following are present:

(1) The United States armed forces assumed the duties of a bailee.

(2) The bailor did not assume the risk of loss by express agreement.

(3) Authorized United States armed forces military or civilian personnel acting in their official capacity properly accepted the property.

(d) Claims for loss or damage to:

(1) Insured or registered mail under § 842.49(a), (b), or (c) while in the possession of the United States armed forces military or civilian personnel.

(2) Minimum fee insured mail, but only if it has an insurance number or requirement for hand-to-hand receipt while in the possession of the United States armed forces military or civilian personnel.

(3) Any mail in the possession of the US Postal Service or a Military Postal Service due to an unlawful or negligent inspection, search, or seizure conducted in an oversea military postal facility, under orders of armed forces personnel.

(e) Claims for property damage of US military personnel under conditions listed in paragraphs (a) and (b) of this section, where the damage occurred on a military installation and is not payable under the Military Personnel and Civilian Employees' Claims Act.

(f) Claims filed by DOD military or civilian health care providers or legal personnel for their personal liability by settlement or judgment, to include reasonable costs of such litigation, for their common law tortious acts committed within the scope of their employment under circumstances described in 10 U.S.C. 1089(f) and 10 U.S.C. 1054(f).

[55 FR 2809, Jan. 29, 1990, as amended at 55 FR 32076, Aug. 7, 1990]

§ 842.50 Claims not payable.

Exclusions listed in § 842.50 (a) through (l) of this part, are based on the wording of 28 U.S.C. 2680. The remainder are based either on statute or court decisions. The interpretation of these exclusions is a Federal question decided under Federal law. Where State law differs with Federal law, Federal law prevails. A claim is not payable under this subpart if it:

(a) Is based on an act or omission of an employee of the government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid. Do not deny claims solely on this exception without the prior approval of HQ USAF/JACC.

(b) Is based on the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the government, whether or not the discretion involved is abused. Do not deny claims solely on this exception without the prior approval of HQ USAF/JACC.

(c) Arises out of the loss, miscarriage, or negligent transmission of letters or postal matter, except those claims payable under § 842.49.

(d) Arises with respect to the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise, or any other law enforcement officer.

(e) Is cognizable under the Suits in Admiralty Act or under the Public Vessels Act.

(f) Arises out of an act or omission of any employee of the government in administering the provisions of the Trading With the Enemy Act.

(g) Is for damages caused by the imposition or establishment of a quarantine by the United States.

(h) Arises out of an assault or battery, unless the assault or battery arises out of the acts or omissions of investigative or law-enforcement officers of the US Government, or arises out of the performance of medical, dental or related health care functions.

(i) Arises out of false imprisonment, false arrest, malicious prosecution or abuse of process, unless such actions were committed by an investigative or

law enforcement officer of the United States who is empowered by law to execute searches, seize evidence, or make arrests for violations of federal law.

(j) Arises out of libel, slander, misrepresentation, or deceit.

(k) Arises out of interference with contract rights.

(l) Arises from the fiscal operations of the Department of the Treasury or from the regulation of the monetary system.

(m) Arises out of the combat activities of the military or naval forces, or the Coast Guard, during time of war.

(n) Arises from activities of the Tennessee Valley Authority.

(o) Arises from the activities of the Panama Canal Company.

(p) Arises from the activities of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives.

(q) Is for the personal injury or death of a member of the Armed Forces of the United States, including the Coast Guard, incurred incident to service.

(r) Is for the personal injury or death of a government employee for whom benefits are provided by the FECA.

(s) Is for the personal injury or death of an employee, including nonappropriated fund employees, for whom benefits are provided by the Longshore and Harbor Workers' Compensation Act (LHWCA).

(t) Is for the personal injury or death of any government contractor employee for whom benefits are provided under any worker's compensation law, or under any contract or agreement providing employee benefits through insurance, local law, or custom when the United States pays them either directly or as part of the consideration under the contract. Only HQ USAF/JACC may settle these claims.

(u) Is for taking of property as by technical trespass or overflight of aircraft and of a type contemplated by the Fifth Amendment to the US Constitution, or otherwise constitutes a taking.

(v) Is for damage from or by flood or flood waters at any place.

(w) Is for damage to property or for any death or personal injury occurring directly or indirectly as a result of the exercise or performance of, or failure to exercise or perform, any function or duty by any Federal agency or employee of the government to carry out the provisions of the Federal Civil Defense Act of 1950 during the existence of a civil defense emergency.

(x) Is for patent or copyright infringement.

(y) Is for damage to property of a state, commonwealth, territory, or the District of Columbia caused by ANG personnel engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, or 505 who are assigned to a unit maintained by that state, commonwealth, territory, or the District of Columbia unless the express approval for payment is received from HQ USAF/JACC.

(z) Is for damage to property or for any death or personal injury arising out of the activities of any federal agency or employee of the government in carrying out the provisions of the Federal Disaster Relief Act of 1954.

(aa) Arises from activities that present a political question.

(bb) Results wholly from the negligent, or wrongful act of the claimant or agent.

(cc) Is for reimbursement for medical, hospital, or burial expenses furnished at the expense of the United States.

(dd) Arises from contractual transactions, express or implied, including rental agreements, sales agreements, leases and easements, which are payable or enforceable under such contracts or arise out of irregular procurement and implied contract.

(ee) Arises from private, as distinguished from government, transactions.

(ff) Is based solely on compassionate grounds.

(gg) Is for rent, damage, or other expenses or payments involving the regular acquisition, use, possession, or disposition of real property of interests therein by and for the Air Force.

(hh) Is not in the best interests of the United States, is contrary to public policy, or is otherwise contrary to the basic intent of the MCA; for example, claims by inhabitants of unfriendly foreign countries or by or based on injury or death of individuals considered to be unfriendly to the United States. Claims

considered not payable under this paragraph are forwarded, with recommendations for disposition, through claims channels to HQ USAF/JACC.

(ii) Is presented by a national, or a corporation controlled by a national, of a country at war or engaged in armed conflict with the United States, or any country allied with such enemy country unless the appropriate settlement authority determines that the claimant is, and at the time of the incident was, friendly to the United States. A prisoner of war or an interned enemy alien is not excluded as to a claim for damage, loss, or destruction of personal property in the custody of the Government otherwise payable. Claims considered not payable under this paragraph are forwarded with recommendations for disposition, through claims channels, to HQ USAF/JACC.

(jj) Is for personal injury or death of military or civilian personnel of a foreign country, if their personal injury or death was suffered incident to their service.

(kk) Is for damage to or loss of bailed property when the bailor specifically assumes such risk.

(ll) Is for property damage, personal injury, or death occurring in a foreign country to an inhabitant of that country.

(mm) Is for the loss of a rental fee for personal property.

(nn) Arises out of matters which are in litigation against the United States.

(oo) Is payable under any one of the following statutes and implementing regulations:

(1) Federal Tort Claims Act.

(2) Foreign Claims Act.

(3) International Agreements Claims Act.

(4) Air Force Admiralty Claims Act and the Admiralty Extension Act.

(5) National Guard Claims Act.

(6) Military Personnel and Civilian Employees' Claims Act.

§ 842.51 Applicable law.

This paragraph provides the existing law governing liability, measurement of liability and the effects of settlement upon awards.

(a) *Extent of liability*. Where the claim arises is important in determining the extent of liability.

(1) When a claim arises in the United States, the law of the place where the act or omission occurred governs liability. The settlement authority considers the local law on such issues as dangerous instrumentalities, assumption of risk, res ipsa loquitur, last clear chance, discovered peril, and comparative and contributory negligence. Absolute liability is never imposed.

(2) *Claims in foreign countries*. (i) In claims arising in a foreign country, where the claim is for personal injury, death, or damage to or loss of real or personal property caused by an act or omission alleged to be negligent, wrongful, or otherwise involving fault of military personnel or civilian officers or employees of the United States acting within the scope of their employment, liability or the United States is determined according to general principles of tort law common to the majority of American jurisdictions, as evidenced by Federal case law and standard legal publications, except as to the principle of absolute liability.

(ii) The law of the foreign country governing the legal effect of contributory or comparative negligence by the claimant will be applied in determining the relative merits of the claim. In the unusual situation where foreign law governing contributory or comparative negligence does not exist, use traditional rules of contributory negligence. Foreign rules and regulations governing the operation of motor vehicles (rules of the road) are applied to the extent those rules are not specifically superseded or preempted by United States military traffic regulations.

(3) When adjudicating claims based upon negligence, the principle of absolute liability is not applicable, even though otherwise prescribed by applicable local law.

(4) The meaning and construction of the MCA is a Federal question to be determined by Federal law.

(b) *General information:* (1) The measure of daages in claims arising in the United States or its possessions is determined according to the law of the place where the act or omission occurred. The measure of damages in claims arising overseas is determined according to general principles of American tort law.

(2) Apportion damages against the United States in the same manner as they are apportioned in suites against private persons if local law applies comparative negligence.

(3) Do not deduct proceeds from private insurance policies except to the extent allowed by local law. However, proceeds are deducted if the policy was paid for by the United States.

(4) Deduct compensation and benefits from the Department of Veterans Affairs, or monetary value received from any U.S. Government associated source from the damages which may be awarded. Deduct sick and annual leave payments if local law allows.

(5) Do not approve:

(i) Punitive damages.

(ii) Cost of medical or hospital services furnished at U.S. expense.

(iii) Cost of burial expenses paid by the United States.

(c) *Settlement by insurer or joint tortfeasor*. When settlement is made by an insurer or joint tort-feasor and an additional award is warranted, an award may be made if both of the following are present:

(1) The United States is not protected by the release executed by the claimant.

(2) The total amount received from such source is first deducted.

§ 842.52 Appeal of final denials.

(a) A claimant may appeal the final denial of the claim. The claimant sends the request, in writing, to the settlement authority within a reasonable time following the final denial. Sixty days is considered a reasonable time, but the settlement authority may waive the time limit for good cause.

(b) Upon receipt of the appeal, the original settlement authority reviews the appeal.

(c) Where the settlement authority does not reach a final agreement on an appealed claim, he or she sends the entire claim file to the next higher settlement authority, who is the appellate authority for that claim.

(d) The decision of the appellate authority is the final administrative action on the claim.

§ 842.53 Right of subrogation, indemnity, and contribution.

The Air Force becomes subrogated to the rights of the claimant upon settling a claim. The Air Force has the rights of contribution and indemnity permitted by the law of the situs, or under contract. Do not seek contribution or indemnity from US military personnel or civilian employees whose conduct gave rise to government liability.

§ 842.54 Attorney fees.

In the settlement of any claim pursuant to 10 U.S.C. 2733 and this subpart, attorney fees will not exceed 20 percent of any award provided that when a claim involves payment of an award over $1,000,000, attorney fees on that part of the award exceeding $1,000,000 may be determined by the Secretary of the Air Force. For the purposes of this paragraph, an award is deemed to be the cost to the United States of any trust or structured settlement, and not its future value.

Subpart G—Foreign Claims (10 U.S.C. 2734)

§ 842.55 Scope of this subpart.

This subpart tells how to settle and pay claims against the United States presented by inhabitants of foreign countries for property damage, personal injury, or death caused by military and civilian members of the US Armed Forces in foreign countries.

§ 842.56 Definitions.

(a) *Foreign country*. A national state other than the United States, including any place under jurisdiction of the United States in a foreign country.

(b) *Inhabitant of a foreign country*. A person, corporation, or other business association whose usual place of abode is in a foreign country. The term "inhabitant" has a broader meaning than such terms as "citizen" or "national", but does not include persons who are merely temporarily present in a foreign country. It does not require foreign citizenship or domicile.

(c) *Appointing authority*. An Air Force official authorized to appoint members to foreign claims commissions (FCC).

§ 842.57 Delegations of authority.

(a) *Settlement authority:* (1) The Secretary of the Air Force has the authority to:

(i) Settle claims for payment of $100,000 or less.

(ii) Settle claims for more than $100,000, pay the first $100,000, and report the excess to the General Accounting Office for payment.

(iii) Deny claims in any amount.

(2) The Judge Advocate General has delegated authority to:

(i) Settle claims for payment of $100,000 or less.

(ii) Deny claims in any amount.

(3) The Deputy Judge Advocate General, Director of Civil Law, and the Chief, Deputy Chief and Branch Chiefs, Claims and Tort Litigation Staff are each a foreign claims commission and have delegated authority to:

(i) Settle claims for payment of $50,000 or less.

(ii) Deny a claim in any amount.

(4) The SJAs of PACAF, USAFE, 9AF (for CENTCOM) and AFSPACECOM (for Greenland and Canada) are each a foreign claims commission and have delegated authority to approve claims for payment arising within their geographic area of responsibility for $50,000 or less, or deny claims of $50,000 or less.

(5) The SJAs of Numbered Air Forces in PACAF and USAFE; the SJA of HQ TUSLOG; the SJA of 12AF (for South America); and the SJAs of Lajes AB, Azores, Patrick AFB, FL, and Howard AFB, Panama are each a foreign claims commission and have delegated authority to:

(i) Recommend payment in any amount.

(ii) Settle claims for payment of $25,000 or less.

(iii) Deny claims for $50,000 or less.

(6) The SJAs of each Air Force base, station and fixed installation in PACAF, USAFE, and CENTCOM, are each a foreign claims commission and have delegated authority to:

(i) Recommend payment in any amount.

(ii) Settle claims for payment of $10,000 or less.

(iii) Deny claims for $25,000 or less.

(b) *Authority to appoint FCCs.* (1) The Chief, Claims and Tort Litigation Staff, has the delegated authority to appoint a judge advocate or civilian attorney as a FCC and to redelegate all or a part of his or her settlement authority to that FCC.

(2) A settlement authority appointed as a FCC in paragraph (a) of this section may appoint one or more subordinate judge advocates or civilian attorneys as FCCs, and may redelegate all or part of that settlement authority to those FCCs, in writing. Every FCC must have authority to settle claims for at least $10,000.

(c) *Authority to reduce, withdraw, or restore settlement authority.* Any superior settlement authority may reduce, withdraw, or restore delegated authority, in writing, except no one may reduce or withdraw the authority of a FCC to settle claims for $10,000 or less.

(d) *Settlement negotiations.* A settlement authority may settle a claim in any sum within its settlement authority, regardless of the amount claimed. Send uncompromised claims in excess of the delegated authority through claims channels to the level with settlement authority. Unsuccessful negotiations at one level do not bind higher authority.

(e) Special exceptions. Do not settle claims for medical malpractice without HQ USAF/JACC approval.

[55 FR 2809, Jan. 29, 1990, as amended at 55 FR 32076, Aug. 7, 1990; 56 FR 1574, Jan. 16, 1991]

§ 842.58 Filing a claim.

(a) *How and when filed.* A claim is filed when a federal agency receives from a claimant or authorized agent a properly completed SF 95 or other signed and written demand for money damages in a sum certain. A claim belonging to another agency is promptly transferred to the appropriate agency.

(b) *Amending a claim.* A claimant may amend a claim at any time prior to final action. An amendment must be in writing and signed by the claimant or authorized agent.

§ 842.59 Advance payments.

Subpart Q outlines procedures for advance payments.

§ 842.60 Statute of limitations.

(a) A claim must be filed in writing within 2 years after it accrues. It accrues when the claimant discovers or reasonably should have discovered the existence of the act that resulted in the claimed loss or injury.

(b) In computing the statutory time period, the day of the incident is excluded and the day the claim was filed is included.

(c) War or armed conflict does not toll the statute of limitations.

§ 842.61 Who may file a claim.

(a) Owners of the property or their authorized agents for property damage.

(b) Injured persons or other authorized agents for personal injury.

(c) Executors or administrators of a decedent's estate, or any other person legally entitled to do so under applicable local law, for an individual's death.

(d) Authorized agents (including the claimant's attorney) must show their title or legal capacity and present evidence of authority to present the claim.

§ 842.62 Who are proper claimants.

Claimants include inhabitants of a foreign country who are:

(a) Foreign nationals.

(b) US nationals, unless they reside there primarily because they are:

(1) Employed directly by the United States.

(2) Employed by a US civilian contractor to further performance of a contract with the United States.

(3) Sponsored by or accompanying someone employed as described in § 842.62(b) (1) or (2) of this part.

(c) US corporations with a place of business in the country in which the claim arose.

(d) Foreign governments and their political subdivisions, including a municipal and prefectural government.

(e) Foreign companies and business entities.

§ 842.63 Who are not proper claimants.

Persons who are not proper claimants include:

(a) Insurers and other subrogees.

(b) Dependents accompanying US military and US national civilian employees.

(c) Foreign military personnel suffering property damage, personal injury, or death from a joint military mission with the United States or from conduct of a US military member or employee acting in the scope of employment unless an international agreement specifically provides for recovery.

(d) Civilian employees of the United States, including local inhabitants, injured in the scope of their employment.

(e) National governments and their political subdivisions engaging in war or armed conflict with the United States or its allies.

(f) A national or nationally controlled corporation of a country engaging in war or armed conflict with the United States or its allies, unless the FCC or local military commander determines the claimant is friendly with the United States.

§ 842.64 Payment criteria.

The following criteria is considered before determining liability.

(a) The incident causing the damage or injury must occur outside the United States. It must be caused by noncombatant activities of the US Armed Forces or by civilian employees or military members of the Armed Forces.

(b) Negligence is not a prerequisite.

(c) Scope of employment is considered in the following situations.

(1) It is a prerequisite to US responsibility if the employee causing the damage or injury is a local inhabitant, a prisoner of war, or an interned enemy alien. These persons are "employees" within the meaning of the Foreign Claims Act (FCA) only when in the service of the United States. Ordinarily, a slight deviation as to time or place does not constitute a departure from the scope of employment. The purpose of the activity and whether it furthers the general interest of the United States is considered. If the claim arose from the operation or use of a US Armed Forces vehicle or other equipment by such a person, pay it provided local law imposes liability on the owner of the vehicle or other equipment in the circumstances involved.

(2) It is immaterial when the claim arises from the acts or omissions of

any US Armed Forces member or employee not listed in § 842.64(c)(1) of this part. The Act imposes responsibility on the United States when it places a US citizen or non-US citizen employee in a position to cause the injury or damage. If the cause is a criminal act clearly outside the scope of employment, ordinarily pay the claim and consider disciplinary action against the offender.

§ 842.65 Claims not payable.

A claim is not payable when it:

(a) Has been paid or denied by a competent tribunal under the North Atlantic Treaty Organization (NATO), Status of Forces Agreement (SOFA), or any similar SOFA or treaty.

(b) Is purely contractual in nature.

(c) Is for attorney fees, punitive damages, a judgment or interest on a judgment, bail, or court costs.

(d) Accrues from a private contractual relationship between US personnel and third parties about property leases, public utilities, hiring of domestic servants, and debts of any description. This claim is sent for action to the commander of the person concerned (see 32 CFR part 818).

(e) Is based solely on compassionate grounds.

NOTE: A Solatium payment is paid from O&M funds as an investigative expense.

(f) Is a bastardy claim.

(g) Is for patent or copyright infringement.

(h) Is waived under an international agreement.

(i) Is for rent, damage, or other payments involving regular acquisition, possession, and disposition of real property by or for the Air Force.

(j) Is filed by a Communist country or its inhabitants, unless authorized by HQ USAF/JACC.

(k) Is for real property taken by a continuing trespass.

(l) Is for personal injury or death of a person covered by:

(1) The Federal Employees' Compensation Act (5 U.S.C. 8101, *et seq.*).

(2) The Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901, *et seq.*).

(3) A US contract or agreement providing employee benefits through insurance, local law, or custom, where the United States pays for them either directly or as part of the consideration under the contract. (See 42 U.S.C. 1651 and 42 U.S.C. 1701.) The Judge Advocate General or Chief, Claims and Tort Litigation Staff, HQ USAF/JACC, may authorize an award where local benefits are not adequate. Local benefits are deducted from any award.

(m) Results from an action by an enemy, or directly or indirectly from an act of the armed forces of the United States in combat, except that a claim may be allowed if it arises from an accident or malfunction incident to the operation of an aircraft of the armed forces of the United States, including its airborne ordnance, indirectly related to combat, and occurring while preparing for or going to, or returning from a combat mission.

(n) Is based on negligence of a concessionaire or other independent contractor.

(o) Arises out of personal activities of dependents, guests, servants, or pets of members and employees of the US Armed Forces. (This includes situations where local law imposes strict liability or where the head of a household is held vicariously liable for their negligence.)

(p) Is the subject of litigation against the United States or its employees. This restriction does not apply to joint criminal/civil proceedings in a foreign court. Claims settlement may be authorized by HQ USAF/JACC in appropriate cases on request.

(q) Is covered under US admiralty laws, unless authorized by The Judge Advocate General or Chief, Claims and Tort Litigation Staff.

(r) Is one for which a foreign government is responsible under SOFA, treaty, or other agreement. However, HQ USAF/JACC may authorize payment of a claim where the foreign government refuses to recognize its legal responsibilities and the claimant has no other means of compensation.

§ 842.66 Applicable law.

This paragraph provides guidance to determine the applicable law for assessment of liability.

(a) A claim is settled under the law and standards in effect in the country where the incident occurred. In calculating the amount of any lump sum

award, the present value of any periodic payment upon which the award is based, is computed, unless the law of the place of occurrence prohibits it.

(b) Contributory negligence committed by the claimant, claimant's agent, or employee is not used as a bar to recovery unless local law or custom requires it. If the comparative negligence doctrine is used, the percentage of negligence of each party is reflected in the apportionment of liability. The amount of damage sustained by both parties is apportioned according to local law.

(c) The following principles of the collateral source doctrine are applied in settling a claim except where local law provides otherwise:

(1) Any sums the claimant recovers from collateral sources, including proceeds of property insurance the claimant paid for are not deducted from the claim except when those sums are from:

(i) The US Government.

(ii) A US military member or employee.

(iii) A Joint tort-feasor.

(iv) An Insurer of § 842.66(c)(1)(i), (ii), or (iii), above.

(2) Do not deduct insurance or any other payments where the US military member or employee would have to make reimbursement.

§ 842.67 Reconsideration of final denials.

This paragraph provides the procedures used to reconsider a final denial.

(a) An FCC may reopen, reverse, or reconsider, in whole or in part, any claim it previously decided if the request for reconsideration is received in a reasonable time. Sixty days is considered a reasonable time, but the FCC may waive the time limit for good cause.

(b) An FCC reconsiders the final action on a claim when there is:

(1) New and material evidence concerning the claim.

(2) Obvious error in facts or calculation of the original settlement.

(3) Fraud or collusion in the original submission of the claim.

(c) The FCC must state the reason for reconsideration in its opinion. A court decision is not in itself sufficient basis for reconsidering a claim, but the facts that resulted in the judgment may warrant reconsideration. The amount of a court judgment is not binding on a FCC's determination of damage, but the commission may consider the judgment as evidence of the local law on the subject.

§ 842.68 Right of subrogation, indemnity, and contribution.

The Air Force becomes subrogated to the rights of the claimant upon settling a claim. The Air Force has the rights of indemnity and contribution permitted by the law of the situs or under contract. Contribution or indemnity should not be sought:

(a) From US military personnel or civilian employees whose conduct gave rise to government liability.

(b) Where recovery action would be harmful to international relations.

Subpart H—International Agreement Claims (10 U.S.C. 2734a and 2734b)

§ 842.69 Scope of this subpart.

This subpart governs Air Force actions in investigating, processing, and settling claims under international agreements.

§ 842.70 Definitions.

The following are general definitions. See the relevant international agreement for the specific meaning of a term to use with a specific claim.

(a) *Civilian component.* Civilian personnel accompanying a force of a contracting party, who are employed by that force. Indigenous employees, contractor employees, or members of the American Red Cross are not a part of the civilian component unless specifically included in the agreement.

(b) *Contracting party.* A nation signing the governing agreement.

(c) *Force.* Personnel belonging to the land, sea, or air armed services of one contracting party when in the territory of another contracting party in connection with their official duties.

(d) *Legally responsible.* A term of art providing for settlement of claims under cost sharing international agreements consistent with the law of the receiving State. Often these claims are

caused by local inhabitant employees, not part of the civilian component, under a respondeat superior theory.

(e) *Receiving state*. The country where the force or civilian component of another party is located.

(f) *Sending state*. The country sending the force or civilian component to the receiving State.

(g) *Third parties*. Those other than members of the force and civilian component of the sending or receiving States. Dependents, tourists, and other noninhabitants of a foreign country are third parties unless the agreement specifically excludes them.

§ 842.71 Delegations of authority.

(a) *Reimbursement authority*. The following individuals have delegated authority to reimburse or pay a pro rata share of a claim or object to a claim in any amount:

(1) The Secretary of the Air Force.

(2) The Judge Advocate General.

(3) The Deputy Judge Advocate General.

(4) The Chief of Civil Law.

(5) Chief, Deput Chief, and Branch Chiefs, Claims and Tort Litigation Staff.

(6) The SJAs and Deputy SJAs of PACAF, USAFE, 5th Air Force, Lajes Field, and 9th Air Force (for CENTCOM).

(b) *Redelegation of authority*. A settlement authority may redelegate his or her authority to a subordinate judge advocate or civilian attorney in writing.

(c) *Authority to reduce, withdraw, and restore settlement authority*. Any superior settlement authority may reduce, withdraw, or restore delegated authority.

§ 842.72 Filing a claim.

(a) *Claims arising in a foreign country*. (1) If a third party claimant tries to file an international agreement claim with Air Force, direct that person to the appropriate receiving State office.

(2) If the Air Force receives a claim, send it to the US sending State office for delivery to the receiving State.

(b) *Claims arising in the United States*. The claimant files tort claims arising from the act or omission of military or civilian personnel of another contracting party at any US military installation. The installation receiving the claim either:

(1) Investigates it if the foreign personnel are assigned there.

(2) Sends it to the installation where the foreign personnel are assigned.

Subpart I—Use of Government Property Claims (10 U.S.C. 2737)

§ 842.73 Scope of this subpart.

This subpart explains how to settle and pay claims against the United States, for property damage, personal injury, or death incident to the use of a government vehicle or any other government property by Air Force military and civilian personnel which are not payable under any other statute.

§ 842.74 Definitions.

(a) *Government installation*. A United States Government facility having fixed boundaries and owned or controlled by the government.

(b) *Vehicle*. Every mechanical device used as a means of transportation on land.

§ 842.75 Delegations of authority.

(a) *Settlement authority*. The following individuals have delegated authority to settle claims for $1,000 or less and deny them in any amount.

(1) The Judge Advocate General.

(2) The Deputy Judge Advocate General.

(3) Director of Civil Law.

(4) Chief, Deputy Chief and Branch Chiefs, Claims and Tort Litigation staff.

(5) SJA of HQ 9AF for CENTCOM, and SJAs of PACAF and USAFE.

(6) SJAs of single base GCMs and GCMs in PACAF and USAFE.

(7) The SJA of each Air Force base, station and fixed installation.

(8) Any other judge advocate designated by The Judge Advocate General.

(b) *Redelegation of authority*. A settlement authority may redelegate it to a subordinate judge advocate or civilian attorney in writing.

(c) *Authority to reduce, withdraw, and restore settlement authority*. Any superior settlement authority may reduce,

withdraw, or restore delegated authority.

§ 842.76 Filing a claim.

(a) *How and when filed.* A claim has been filed when a federal agency receives from a claimant or the claimant's duly authorized agent written notification of an incident of property damage, personal injury or death accompanied by a demand for money damages in a sum certain. A claim incorrectly presented to the Air Force will be promptly transferred to the appropriate Federal agency.

(b) *Amending a claim.* A claimant may amend a claim at any time prior to final Air Force action. Amendments will be submitted in writing and signed by the claimant or the claimant's duly authorized agent.

§ 842.77 Statute of limitations.

(a) A claim must be presented in writing within 2 years after it accrues. It accrues at the time the claimant discovers, or in the exercise of reasonable care should have discovered, the existence of the act causing property damage, personal injury or death for which the claim is filed.

(b) In computing time to determine whether the period of limitation has expired, exclude the incident date and include the date the claim was filed.

§ 842.78 Claims payable.

When all of the following are present, payment of a claim in the amount of $1,000 or less is authorized if it:

(a) Is for property damage, personal injury, or death. (Payment for a personal injury or death claim is limited to costs of reasonable medical, hospital, and burial expenses actually incurred and not otherwise furnished or paid by the United States.)

(b) Was caused by a military member or civilian employee of the Air Force, whether acting within or outside the scope of employment.

(c) Arose from the use of a government vehicle at any place or other government property on a government installation, and

(d) Is not payable under any other provision of law except Article 139, UCMJ.

§ 842.79 Claims not payable.

A claim is not payable if it is:

(a) Payable under any other provision of the law.

(b) Caused wholly or partly by a negligent or wrongful act of the claimant, the claimant's agent, or employee.

(c) A subrogated claim.

(d) Recoverable from other sources such as an insurance policy, or recovered from action under Article 139, UCMJ.

§ 842.80 Reconsideration of final denial.

(a) The statute does not provide for appeals. The original settlement authority may, however, reconsider any decision. There is no set format for a reconsideration but it should be submitted in writing within 60 days of the original decision.

(b) The settlement authority may either grant all or any portion of the requested relief without referral to any other office, or forward the entire file with the reasons for the action and recommendations to the next higher claims settlement authority for independent review and final action.

§ 842.81 Settlement agreement.

Do not pay a claim unless the claimant accepts the amount offered in full satisfaction of the claim and signs a settlement agreement to that effect.

Subpart J—Admiralty Claims (10 U.S.C. 9801–9804, 9806; 46 U.S.C. 740)

§ 842.82 Scope of this subpart.

It sets forth the procedure for administrative settlement of admiralty and maritime claims in favor of and against the United States.

§ 842.83 Definitions.

(a) *Admiralty contracts.* A contract covering maritime services or a maritime transaction such as vessel procurement and space for commerical ocean transportation of DOD cargo, mail, and personnel is an admiralty contract.

(b) *General average.* General average is the admiralty rule that when someone's property is thrown overbaord to

save a ship, the ship owner and all owners of the cargo must share the loss.

(c) *Maritime torts.* A maritime tort is one committed in navigable waters or on land or in the air where a substantial element of the damage, personal injury, or death occurred in navigable waters. The activity causing the tortious act must bear some significant relationship to traditional maritime activity.

(d) *Vessel.* Every description of watercraft used or usable as a means of transportation on water is a vessel. (1 U.S.C. 3)

§ 842.84 Delegations of authority.

(a) The following officials have the authority to settle a claim against the Air Force in the amounts provided:

(1) The Secretary of the Air Force has the authority to:

(i) Settle a claim for payment of more than $500,000 and to certify it to Congress for payment.

(ii) Settle and pay a claim for $500,000 or less.

(iii) Deny a claim in any amount.

(2) The following individuals have delegated authority to settle claims for $100,000 or less:

(i) The Judge Advocate General.

(ii) The Deputy Judge Advocate General.

(iii) The Director of Civil Law.

(iv) The Chief and Deputy Chief, Claims and Tort Litigation staff.

(b) Delegation of settlement authority on claims in favor of the United States.

(1) The Secretary of the Air Force has the authority to settle claims for damage to property under the jurisdiction of the Air Force in an amount not to exceed $500,000, and to settle claims for salvage services performed by the Air Force in any amount.

(2) HQ USAF/JACC refers all claims for damage to property under the jurisdiction of the Air Force for more than $500,000 to the Department of Justice.

(3) The following individuals have delegated authority to settle claims for $100,000 or less and deny them in any amount:

(i) The Judge Advocate General.

(ii) The Deputy Judge Advocate General.

(iii) The Director of Civil Law.

(iv) The Chief and Deputy Chief, Claims and Tort Litigation Staff.

[55 FR 2809, Jan. 29, 1990, as amended at 55 FR 32077, Aug. 7, 1990; 56 FR 1574, Jan. 16, 1991]

§ 842.85 Reconsidering claims against the United States.

This section provides the policy and procedures to reconsider any maritime claim made against the United States.

(a) The settlement authority may reconsider any claim previously disapproved in whole or in part when either:

(1) The claimant submits new evidence in support of the claim.

(2) There were errors or irregularities in the submission or settlement of the claim.

(b) There is no right of appeal to higher authority under this subpart.

Subpart K—Claims Under the Federal Tort Claims Act (28 U.S.C. 1346(b), 2402, 2671, 2672, 2674–2680)

§ 842.86 Scope of this subpart.

This subpart governs claims against the United States for property damage, personal injury, or death, from the negligent or wrongful act or omission of Air Force military or civilian personnel while acting within the scope of their employment. It also covers similar tort claims generated by Air National Guard (ANG) members performing specified duty under 32 U.S.C. on or after 29 December 1981.

§ 842.87 Definitions.

(a) *Compromise.* An agreed settlement based upon the facts, the law, and the application of the law to the facts.

(b) *Final denial.* A letter the settlement authority mails to the claimant or authorized agent advising him or her that the Air Force denies his or her claim.

(c) *Reconsideration.* A request by the claimant or claimant's authorized agent to reevaluate a final decision. A request for reconsideration and an appeal are the same thing.

(d) *Negligence.* A departure from the conduct expected from a reasonably

prudent person under similar circumstances.

(e) *Proximate cause*. The dominant or primary cause involving a natural and continuous sequence unbroken by an effective cause.

§ 842.88 Delegations of authority.

(a) *Settlement authority*. (1) Subject to the prior written, approval of the United States Attorney General or his designee, the following individuals have delegated authority to settle claims in excess of $25,000, to settle claims for $25,000 or less, and to deny a claim in any amount:

(i) The Judge Advocate General.

(ii) The Deputy Judge Advocate General.

(iii) The Director of Civil Law.

(2) Subject to the prior written approval of the United States Attorney General or his designee, the Chief, Claims and Tort Litigation Staff has delegated authority to settle claims in excess of $25,000 up to a limit of $50,000, to settle claims for $25,000 or less; and to deny a claim in any amount.

(3) The Deputy Chief and Branch Chiefs, Claims and Tort Litigation Staff have delegated authority to settle claims for $25,000 or less and deny a claim in any amount.

(4) The SJA of HQ 9AF for CENTCOM, and SJAs of PACAF and USAFE have delegated authority to settle claims payable, and deny claims filed, for $25,000 or less.

(5) The following individuals have delegated authority to settle claims payable, and deny claims filed, for $15,000 or less:

(i) SJAs of single base GCMs.

(ii) SJAs of GCMs in PACAF and USAFE.

(iii) SJAs of each Air Force base, station, or fixed installation.

(b) *Redelegation of authority*. A settlement authority may be redelegated, in writing, to a subordinate judge advocate or civilian attorney.

(c) *Authority to reduce, withdraw, and restore settlement authority*. Any superior settlement authority may reduce, withdraw, or restore delegated authority.

(d) *Settlement negotiations*. A settlement authority may settle a claim filed in any amount for a sum within the delegated authority. Unsettled claims in excess of the delegated authority will be sent to the next highest level with settlement authority. Unsuccessful negotiations at one level do not bind higher authority.

(e) *Special exceptions*. Do not settle claims for the following without HQ USAF/JACC approval:

(1) Legal malpractice.

(2) On the job personal injury or death of an employee of a government contractor or subcontractor.

(3) Assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution committed by an investigative or law enforcement officer.

(4) Animal bites.

(5) Personal injury from asbestos or radon.

(6) Medical malpractice.

[55 FR 2809, Jan. 29, 1990, as amended at 56 FR 1574, Jan. 16, 1991]

§ 842.89 Statute of limitations.

A claim must be presented in writing within 2 years after it accrues.

(a) Federal, not state law, determines the time of accrual. A claim normally accrues at the time of injury when essential operative facts are apparent. However, in other instances, especially in complex medical malpractice cases, a claim accrues when the claimant discovers or reasonably should have discovered the existence of the act that resulted in the claimed loss.

(b) In computing the statutory time period, the day of the incident is excluded and the day the claim was filed is included.

(c) The Air Force has 6 months to consider a properly filed claim, after which the claimant may file suit. The claimant's right to sue ends 6 months from the date the final denial is mailed.

(d) Properly asserted third party actions, as permitted under the Federal Rules of Civil Procedure, may be brought against the United States without first filing a claim. In such instances those actions may start more than 2 years after the claim has accrued.

[55 FR 2809, Jan. 29, 1990, as amended at 55 FR 32077, Aug. 7, 1990]

§ 842.90 Reconsideration of final denials.

(a) A claimant may request a settlement authority who denied a claim to reconsider that claim. If the settlement authority denies the request, the claim file is sent to the next higher claims settlement authority for action.

(b) A request for reconsideration must be filed in writing within 6 months of the final denial and prior to initiation of a suit. A request for reconsideration starts a new 6-month period for the Air Force to consider the claim. The claimant may not sue during that period.

§ 842.91 Settlement agreements.

The claimant must sign a settlement agreement and general release before any payment is made.

Subpart L—Property Damage Tort Claims in Favor of the United States (31 U.S.C. 3701, 3711–3719)

§ 842.92 Scope of this subpart.

This subpart describes how to assert, administer, and collect claims for damage to or loss or destruction of government property through negligence or wrongful act. It does not cover admiralty, hospital recovery, or nonappropriated fund claims.

§ 842.93 Delegations of authority.

(a) *Settlement authority*. (1) The following individuals have delegated authority to settle, compromise, suspend, or terminate action on claims for $20,000 or less and to accept full payment on any claim:

(i) The Judge Advocate General.

(ii) The Deputy Judge Advocate General.

(iii) The Director of Civil Law.

(iv) Chief, Deputy Chief, and Branch Chiefs, Claims and Tort Litigation Staff.

(2) The SJA of HQ 9AF (for CENTCOM), and the SJAs of PACAF and USAFE have delegated authority to settle, compromise, suspend, or terminate action on claims for $15,000 or less and to accept full payment on any claim.

(3) SJAs of GCMs located in PACAF and USAFE and single base GCMs located in CONUS have delegated authority to settle, compromise, suspend, or terminate action on claims for $15,000 or less and to accept full payment on any claim.

(4) SJAs of each Air Force base, station or fixed installation have delegated authority to settle, compromise, suspend, or terminate action on claims for $10,000 or less and to accept full payment on any claim.

(b) *Redelegation of authority*. A settlement authority may redelegate it to a subordinate judge advocate or civilian attorney, in writing.

(c) *Authority to reduce, withdraw, or restore settlement authority*. Any superior settlement authority may reduce, withdraw, or restore delegated authority.

§ 842.94 Assertable claims.

A claim may be asserted in writing for loss of or damage to government property, against a tort-feasor when:

(a) Damage results from negligence and the claim is for:

(1) More than $100.

(2) Less than $100 but collection costs are small.

(b) The claim is based on a contract and the contracting officer does not intend to assert a claim under the contract. The contracting officer's intention not to assert a claim should be recorded in a memorandum for the record and placed in the claim file.

(c) The claim is for property damage arising from the same incident as a hospital recovery claim. (The two claims should be consolidated and processed under subpart N).

(d) The Tort-feasor or his insurer presents a claim against the government arising from the same incident. (Both claims should be processed together.)

(e) The claim is assertable as a counterclaim under an international agreement. (The claim should be processed under subpart H).

(f) The claim is based on product liability. HQ USAF/JACC approval must be obtained before asserting the claim.

§ 842.95 Non-assertable claims.

A claim is not assertable under this subpart when it is for:

(a) Reimbursement for military or civilian employees for their negligence claims paid by the United States.

(b) Loss or damage to government property:

(1) Caused by a nonappropriated fund employee acting in the scope of employment.

(2) For which a person has accountability and responsibility under the Report of Survey system.

(c) Loss or damage to nonappropriated fund property assertable under other provisions.

(d) Loss or damage caused by an employee of an instrumentality of the government in the absence of statutory authority to reimburse.

(e) Monies recovered against a foreign government or any of its political subdivisions. (HQ USAF/JACC may authorize this claim as an exception to the rule).

[55 FR 2809, Jan. 29, 1990, as amended at 55 FR 32077, Aug. 7, 1990]

§ 842.96 Asserting the claim.

The base SJA asserts the claim against the tort-feasor by mailing, certified mail, return receipt requested, the original and one copy of a "Notice of Claim" that includes the following:

(a) Reference to the statutory right to collect.

(b) A demand for payment or restoration.

(c) A description of damage.

(d) The date and place of incident.

(e) The name, phone number, and office address of claims personnel to contact.

§ 842.97 Referring a claim to the US Attorney or the Department of Justice.

All claims must be authorized for referral by HQ USAF/JACC prior to being sent to either the US Attorney or the Department of Justice. All claims for demands of more than $20,000.00 which are not collected in full by a settlement authority will be referred (with HQ USAF/JACC approval) to DOJ.

§ 842.98 Statute of limitations.

The government must file suit within 3 years after the cause of action accrues. It accrues when a responsible US official knew or reasonably should have known the material facts that resulted in the claimed loss.

§ 842.99 Compromise, termination, and suspension of collection.

This section establishes the guidelines for compromise, termination, or suspension of a claim.

(a) Compromise of a claim is allowable when:

(1) The tort-feasor is unable to pay the full amount within a reasonable time. (A sworn statement showing the debtor's assets and liabilities, income, expenses, and insurance coverage should be obtained and included in the claim file).

(2) The Government is unable to collect a claim in full within a reasonable time even though the enforced collection proceedings are used for collection.

(3) The cost to collect does not justify enforced collection of the full amount.

(4) The government may have difficulty proving its case in court for the full amount claimed.

(b) Compromise is not allowable when there may be fraud, misrepresentation, or violation of antitrust laws. The Department of Justice must authorize compromise of such claims.

(c) Termination of collection is allowable when:

(1) The government is unable to collect the debt after exhausting all collection methods.

(2) The government is unable to locate the tort-feasor.

(3) The cost to collect will exceed recovery.

(4) The claim is legally without merit.

(5) The evidence does not substantiate the claim.

(d) Suspension of collection is allowable when:

(1) The government is unable to locate tort-feasor.

(2) The tort-feasor is presently unable to pay but:

(i) The statute of limitations is tolled or is running anew.

(ii) Future collection may be possible.

Subpart M—Claims Under the National Guard Claims Act (32 U.S.C. 715)

§ 842.100 Scope of this subpart.

This subpart explains how to settle claims against the United States arising out of the noncombat activities of the Air National Guard (ANG), when its members are acting within the scope of their employment and performing duty under 32 U.S.C. Contact HQ USAF/JACC for guidance on any claim for property damage, injury or death by the ANG which accrued prior to 29 December 1981.

§ 842.101 Definitions.

(a) *Appeal*. An appeal is a request by the claimant or claimant's authorized agent to reevaluate the final decision made on a claim. A request for reconsideration is considered as an appeal.

(b) *Air National Guard (ANG)*. The federally recognized Air National Guard of each state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

(c) *ANG member*. An ANG member is one who is performing duty under 32 U.S.C., section 316, 502, 503, 504, or 505 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

(d) *ANG duty status*—(1) *Active federal service*. ANG members may serve on active Federal duty under 10 U.S.C. to augment the active Air Force under certain circumstances or for certain types of duty or training (e.g., overseas training exercises and ANG alert duty). Duty under 10 U.S.C. does not fall under this subpart.

(2) *Federally funded duty*. ANG members perform specified federally funded duty or training under 32 U.S.C. such as weekend drills, annual training, field exercises, range firing, military schooling, full time unit support, or recruiting duties. Duty under 32 U.S.C. falls under this subpart for noncombat activities.

(3) *State duty*. State duty is duty not authorized by federal law but required by the governor of the state and paid for from state funds. Such duty includes civil emergencies (natural or other disasters), civil disturbances (riots and strikes), and transportation requirements for official state functions, public health, or safety. State duty does not fall under this subpart.

(e) *Compromise*. A compromise is an agreed settlement based upon the facts, the law, and the application of the law to the facts.

(f) *Final denial*. A final denial is a letter from the settlement authority to the claimant or authorized agent advising of the decision to deny the claim.

(g) *Noncombat activity*. Noncombat activity is an act, other than combat, war or armed conflict, which is particularly military in character and has little parallel in the civilian community.

(h) *ANG technicians*. An ANG technician is a Federal employee employed under 32 U.S.C. 709. Tort claims arising out of his or her activity are settled under the Federal Tort Claims Act (FTCA).

§ 842.102 Delegations of authority.

This paragraph outlines the levels of authority authorized to settle claims brought under the National Guard Claims Act (32 U.S.C. 715).

(a) *Settlement authority*. (1) The Secretary of the Air Force has authority to:

(i) Settle a claim for $100,000 or less.

(ii) Settle a claim for more than $100,000, paying the first $100,000 and reporting the excess to the General Accounting Office for payment.

(iii) Deny a claim in any amount.

(2) The Judge Advocate General has delegated authority to settle a claim for $100,000 or less, and deny a claim in any amount.

(3) The following individuals have delegated authority to settle a claim for $25,000 or less, and deny a claim in any amount:

(i) The Deputy Judge Advocate General.

(ii) The Director of Civil Law.

(iii) The Chief, Deputy Chief, and Branch Chiefs, Claims and Tort Litigation Staff.

(4) The SJA of 9AF for CENTCOM and the SJAs of USAFE and PACAF have delegated authority to settle claims payable or deny claims filed for $25,000 or less.

(5) SJAs of single base GCMs, GCMs in PACAF and USAFE and each Air Force base, station or fixed installation have delegated authority to settle claims payable, and deny claims filed, for $15,000 or less.

(b) *Redelegation of authority*. A settlement authority may redelegate up to $25,000 of settlement authority to a subordinate judge advocate or civilian attorney. This redelegation must be in writing and can be for all claims or limited to a single claim.

(c) *Appellate authority*. Upon appeal a settlement authority has the same authority to settle a claim as that specified above. However, no appellate authority below the Office of the Secretary of the Air Force may deny an appeal of a claim it previously denied.

(d) *Authority to reduce, withdraw, and restore settlement authority*. Any superior settlement authority may reduce, withdraw, or restore delegated settlement authority.

(e) *Settlement negotiations*. A settlement authority may settle a claim filed in any amount for a sum within the delegated settlement authority regardless of the amount claimed. Unsettled claims in excess of the delegated settlement authority are sent to the individual with higher settlement authority. Unsuccessful negotiations at one level do not bind higher authority.

(f) *Special exceptions*. No authority below the level of HQ USAF/JACC may settle claims for:

(1) Legal malpractice.

(2) On the job personal injury or death of an employee of a government contractor or subcontractor.

(3) Assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution committed by an investigative or law enforcement officer.

§ 842.103 Filing a claim.

This paragraph explains how to file a claim under the National Guard Claims Act.

(a) *How and when filed*. A claim is filed when a federal military agency receives from a claimant or duly authorized agent a properly completed SF 95 or other written and signed demand for money damages in a sum certain. Claims belonging to another agency are promptly transferred to the correct agency.

(b) *Receipt of claims from State National Guard agencies*. The Office of the State Adjutant General promptly sends claims it receives to the appropriate Air Force claims authority in whose geographic area the incident occurred. The report forwarded to the Air Force includes:

(1) The date, place, and nature of the incident.

(2) The names and organizations of ANG members involved, and the statutory duty status of the ANG members at the time of the incident (include copies of orders, if applicable).

(3) A scope of employment statement from the supervisors of the ANG members involved.

(4) The names of the claimants.

(5) A brief description of any damage to private property, personal injuries, or death.

(c) *Claims investigations*. (1) Upon receipt of a claim:

(i) It is investigated by claims office personnel responsible for the geographic area where the incident causing the claim occurred.

(ii) The investigative report includes a scope of employment statement and a copy of the orders authorizing the performance of duty by the ANG member.

(2) The State Adjutants General designate an official or office as point of contact for Air Force claims personnel and furnish necessary personnel to assist the Air Force investigation, subject to the availability of funds and personnel.

(d) *Amending a claim*. A claimant may amend a claim at any time prior to final action. To amend a claim the claimant or his or her authorized agent must submit a written, signed demand.

§ 842.104 Advance payments.

Subpart Q of this part sets forth procedures for such payments.

§ 842.105 Statute of limitations.

A claim must be filed in writing within 2 years after it accrues.

(a) Federal, not state law, determines the time of accrual. A claim accrues

when the claimant discovers or reasonably should have discovered the existence of the act that resulted in the claimed loss.

(b) In computing the statutory time period, the day of the incident is excluded and the day the claim was filed is included.

(c) A claim filed after the statute has run is considered if the United States is at war or in an armed conflict when the claim accrues; or if the United States enters a war or armed conflict after the claim accrues, and good cause is shown. No claimant may file a claim more than 2 years after the good cause ceases to exist or the war or armed conflict ends. Congress or the President establishes the beginning and end of war or armed conflict.

§ 842.106 Who may file a claim.

The following individuals may file a claim under this subpart.

(a) Owners of the property or their authorized agents may file a claim for property damage.

(b) Injured persons or their authorized agents may file a claim for personal injury.

(c) Executors or administrators of a decedent's estate or any other person legally entitled to do so under applicable local law may file a claim based on:

(i) An individual's death.

(ii) A cause of action surviving an individual's death.

(d) Insurers with subrogation rights may file a claim for losses paid in full by them. The parties may file a claim jointly or individually, to the extent of each party's interest, for losses partially paid by insurers with subrogation rights.

(e) Authorized agents signing a claim must show their title or legal capacity and present evidence of such authority to file the claim.

§ 842.107 Who are proper claimants.

Only certain individuals are proper claimants under this subpart. Proper claimants include:

(a) Citizens and inhabitants of the United States.

(b) States or territories and their agencies, unless it is the state of the ANG member who caused the injury or property damage.

(c) Counties, municipalities, or units of local government, unless they are in the state of the ANG member who caused the injury or property damage.

(d) Persons in foreign countries who are not inhabitants of a foreign country.

(e) Property owners, their representatives, and those with certain legal relationships with the record owner, including mortgagors, mortgagees, trustees, bailees, lessees and conditional vendees.

(f) Subrogees, to the extent they have paid the claim.

§ 842.108 Who are not proper claimants.

The following individuals are not proper claimants:

(a) ANG members performing duty under 32 U.S.C. when the personal injury or death claim arises incident to service.

(b) Agencies and departments of the U.S. Government including the District of Columbia government.

(c) Federal nonappropriated fund instrumentalities.

(d) Governments of foreign nations, their agencies, political subdivisions, and municipalities.

(e) The state territory, local government unit, or their agencies, whose ANG member caused the injury or property damage.

(f) Subrogees of all the above.

§ 842.109 Claims payable.

(a) Claims arising from noncombat activities of ANG members performing duty under 32 U.S.C and acting within the scope of their employment, whether or not such injuries or damages arose out of their negligent or wrongful acts or omissions.

(b) Claims are payable if they are for damage to bailed property under § 842.109(a) of this part where:

(1) The ANG assumed the duties of a bailee.

(2) The bailor did not assume the risk of loss by express agreement.

(3) Authorized ANG members acting in their official capacity properly accepted the property.

(c) Claims are payable if they are for loss or damage to:

(1) Insured or registered mail, under § 842.109 (a) or (b) of this part while in the possession of the ANG.

(2) Minimum fee insured mail but only if it has an insurance number or requirement for hand-to-hand receipt and was lost or damaged while in the possession of the ANG.

(3) Any mail in the possession of the United States Postal Service or a Military Postal Service due to an unlawful or negligent inspection, search, or seizure in an oversea military postal facility, which was ordered by ANG members.

(d) Claims filed by ANG military or civilian health care providers or legal personnel for their personal liability by settlement or judgement, to include reasonable costs of such litigation, for their common law tortious acts committed on or after 29 Dec 1981 while performing title 32 duty within the scope of their employment under the circumstances described in 10 U.S.C. 1089(f) and 10 U.S.C. 1054(f).

[55 FR 2809, Jan. 29, 1990, as amended at 55 FR 32077, Aug. 7, 1990]

§ 842.110 Claims not payable.

The following are not payable:

(a) Claims payable under any one of the following statutes and implementing regulations:

(1) The Federal Tort Claims Act (FTCA).

(2) The Foreign Claims Act (FCA).

(3) The International Agreements Claims Act.

(4) The Air Force Admiralty Claims Act and the Admiralty Extensions Act.

(5) The Military Claims Act (MCA).

(6) The Military Personnel and Civilian Employees' Claims Act.

(b) Claims from the combat activities of the armed forces during war or armed conflict.

(c) Claims for personal injury or death of ANG members performing duty under 32 U.S.C. incident to their service.

(d) Claims for damage to or loss of bailed property when the bailor specifically assumed such risk.

(e) Claims for personal injury or death of a person covered by:

(1) The Federal Employees' Compensation Act.

(2) The Longshore and Harbor Workers' Compensation Act.

(3) A United States contract or agreement providing employee benefits through insurance, local law, or custom and the United States pays for such benefits either directly or as a part of the consideration under the contract.

(f) Claims for property damage, personal injury or death occurring in a foreign country to an inhabitant of that country.

(g) Claims caused by the negligent or wrongful acts or omissions of members of the District of Columbia ANG.

(h) Claims arising from a private rather than a government transaction.

(i) Claims for patent or copyright infringement.

(j) Claims for damage, use, or other expenses involving the regular acquisition, possession, and disposition of real property by or for the ANG.

(k) Claims for the taking of private real property by a continuing trespass or by a technical trespass such as overflights of aircraft.

(l) Claims for loss of rental fee for personal property.

(m) Claims in litigation against the United States.

(n) Claims for a maritime occurrence covered under U.S. admiralty laws.

(o) Claims for:

(1) Any tax or customs duty.

(2) The detention of any goods or merchandise by any officer of customs, excise, or law enforcement officer.

(p) Claims from an act or omission of any employee of the Government while administering the provisions of the Trading With the Enemy Act.

(q) Claims for damages caused by the United States' imposition or establishment of a quarantine.

(r) Claims for libel, slander, misrepresentation, deceit or interference with contract rights.

(s) Claims that result wholly from the negligent or wrongful act of the claimant or the claimant's agent.

(t) Claims for reimbursement of medical, hospital, or burial expenses furnished at the expense of the United States, any state, the District of Columbia, or Puerto Rico.

(u) Claims for damage from floods or flood waters.

(v) Claims for damages caused by the fiscal operations of the Treasury or by regulation of the monetary system.

(w) Claims caused by the negligent or wrongful acts or omissions of ANG members acting within the scope of their employment, while performing duty under 32 U.S.C., on or after 29 December 1981.

(x) Claims caused by the negligent or wrongful acts or omissions of ANG technicians employed under 32 U.S.C. 709.

§ 842.111 Applicable law.

(a) *Extent of liability*. The following rules apply to determine the extent of liability of a claim.

(1) *Claims arising in the United States*. The law of the place where the act or omission occurs governs liability. The local law on dangerous instrumentalities, assumption of risk, res ipsa loquitur, last clear chance, discovered peril, and comparative and contributory negligence are considered. Absolute liability is never imposed.

(2) *Claims arising in foreign countries*. The general principles of tort law common to the majority of American jurisdictions as evidenced by Federal case law and standard legal publications, control liability, except that absolute liability is not imposed. However, the law of the place where the act or omission occurs governs the effect of the claimant's comparative or contributory negligence. Where applicable, rules of the road and similar locally prescribed standards of care are followed to determine fault.

NOTE: ANG personnel ordered to foreign countries proceed under title 10, U.S.C.; consequently, the National Guard Claims Act would not apply. However, there may be cases where ANG personnel are inadvertently in a foreign country while on title 32, U.S.C. orders.

(b) *Measure of damages*. The following rules apply to the measurement of damages.

(1) Normally, the law of the place where the act or omission occurs is applied. In claims arising in foreign countries, the measure of damages is determined in accordance with general principles of American tort law.

(2) Damages in suits against private persons are apportioned if local law applies comparative negligence.

(3) Proceeds from private insurance policies are not deducted except to the extent the policy was paid by the Government or is allowed by local law.

(4) Compensation and benefits from any U.S. Government associated source are deducted. However, sick and annual leave payments are deducted only if allowed by local law.

(5) The following are not payable:

(i) Punitive damages.

(ii) Cost of medical or hospital services furnished at U.S. expense.

(iii) Cost of burial expenses paid by the United States, any territory or possession, any state, or the District of Columbia.

(c) *Settlement by insurer or joint tortfeasor*. When settlement is made by an insurer or joint tort-feasor and an additional award is warranted, an award is made if:

(1) The United States is not protected by the release executed by the claimant.

(2) The total amount received from such source is first deducted.

§ 842.112 Appeal of final denials.

This paragraph explains the steps to take when a denial is appealed.

(a) A claimant may appeal the final denial of the claim. The claimant sends the request, in writing, to the initial settlement authority within a reasonable time following the final denial. Sixty days is considered a reasonable time, but the time limit may be waived for good cause.

(b) The initial settlement authority reviews the appeal.

(c) Where the settlement authority does not reach a final agreement with the claimant on an appealed claim, the entire claim file is sent to the next higher settlement authority, who is the appellate authority for that claim.

(d) The decision of the appellate authority is the final administrative action on the claim.

§ 842.113 Government's right of subrogation, indemnity, and contribution.

The Air Force becomes subrogated to the rights of the claimant upon settling a claim. The Air Force has the rights of contribution and indemnity permitted by the law of the situs or

under contract. Contribution or indemnity is not sought from ANG members whose conduct gave rise to Government liability.

§ 842.114 Attorney fees.

In the settlement of any claim pursuant to 32 U.S.C. 715 and this subpart, attorney fees will not exceed 20 percent of any award. For the purposes of this paragraph, an award is deemed to be the cost to the United States at the time of purchase of a structured settlement, and not its future value.

Subpart N—Hospital Recovery Claims (42 U.S.C. 2651–2653)

§ 842.115 Scope of this subpart.

This subpart explains how the United States asserts and settles claims for costs of medical care, against third parties under the Federal Medical Care Recovery Act (FMCRA) and various other laws.

§ 842.116 Definitions.

This paragraph defines terms which are used within this subpart.

(a) *Base Staff Judge Advocate (SJA).* The SJA of the base providing legal services to the Air Force medical facility which furnished initial medical care to the injured party is responsible for processing the hospital recovery claim. If an Air Force facility did not furnish the initial medical care, the SJA of the Air Force base within the claims jurisdiction of the initial treating facility is responsible for processing the claim.

(b) *Compromise.* A mutually binding agreement where payment is made and accepted in an amount less than the full amount of the claim.

(c) *Injured party.* The person who received medical care for injury or disease as a result of the incident on which the claim is based. The injured party may be represented by a guardian, personal representative, estate, or survivor.

(d) *Medical care.* Includes medical and dental treatment, prostheses, and medical appliances the US furnished or reimbursed other sources for providing.

(e) *Reasonable value of medical care.* Either:

(1) An amount determined by reference to rates set by the Director of the Office of Management and Budget for the value of necessary medical care in US medical facilities.

(2) The actual cost of necessary care from other sources which was reimbursed by the United States.

(f) *Third party.* An individual, partnership, business, corporation (including insurance carriers), which is indebted to the United States for medical care provided to an injured party. (In some cases, a state or foreign government can be the third party.)

(g) *Waiver.* The voluntary relinquishment by the United States of the right to collect for medical care provided to an injured party.

§ 842.117 Delegations of authority.

(a) *Settlement authority:* (1) The following individuals have delegated authority to settle, compromise, or waive claims for $40,000 or less and to accept full payment on any claim:

(i) The Judge Advocate General.

(ii) The Deputy Judge Advocate General.

(iii) The Director of Civil Law.

(iv) Chief, Deputy Chief, and Branch Chiefs, Claims and Tort Litigation Staff.

(2) The SJA of HQ 9AF for CENTCOM, and SJAs of PACAF and USAFE have delegated authority to compromise or waive claims for $30,000 or less and to accept full payment on any claim.

(3) SJAs of single base GCMs, the SJAs of GMCs in PACAF and USAFE, and the SJAs of each Air Force base, station, or fixed installation have delegated authority to compromise or waive claims for $15,000 or less and to accept full payment on any claim.

(b) *Authority to assert a claim.* Each settlement authority has authority to assert a claim in any amount for the reasonable value of medical care.

(c) *Redelegation of authority.* A settlement authority may redelegate to a subordinate judge advocate or civilian attorney, in writing, his or her authority to assert, compromsie, or waive claims.

(d) *Authority to reduce, withdraw, and restore settlement authority.* Any superior settlement authority may reduce,

withdraw, or restore delegated authority.

(e) *Settlement negotiations*. A settlement authority may settle a claim filed for an amount within the delegated settlement authority. Claims in excess of the delegated authority must be approved by the next higher settlement authority. Unsuccessful negotiations at one level do not bind higher authority.

NOTE: Telephonic approvals, in the discretion of the higher settlement authority, are authorized.

(f) *Special exceptions*. Only the Department of Justice (DOJ) may approve claims involving:

(1) Compromise or waiver of a claim for more than $40,000.

(2) Settlement previously referred to DOJ.

(3) Settlement where a third party files suit against the US or the injured party arising out of the same incident.

§ 842.118 Assertable claims.

A claim should be asserted when the Air Force has furnished or will furnish medical care in military health care facilities or when the Air Force is responsible for reimbursement to a private care provider and either of the following conditions are met:

(a) Third party liability in tort exists for causing an injury or disease.

(b) Local or foreign law permits the United States to recover or the United States is a third party beneficiary under uninsured motorist coverage, medical pay insurance coverage, worker's compensation, no-fault statutes, or other statutes.

A claim should only be asserted if the base SJA determines it merits assertion. Claims for $150 or less need not be asserted; they should be asserted only if the base SJA or designee determines the collection will not exceed the cost to collect, the third party offers payment and demands a release from the United States before paying damages to the injured party, or the United States asserts a property damage claim under subpart L arising out of the same incident.

§ 842.119 Nonassertable claims.

(a) The following are considered nonassertable claims and should not be asserted:

(1) *Claims against any department, agency, or instrumentality of the United States*. "Agency or instrumentality" includes any self-insured nonappropriated fund activity whether revenue producing, welfare, or sundry. The term does not include private associations.

(2) *Claims for care furnished a veteran by the Department of Veterans Affairs (VA) for service connected disability*. However, claims may be asserted for the reasonable value of medical care an Air Force member receives prior to his or her discharge and transfer to the VA facility.

(3) *Claims for care furnished a merchant seaman under 42 U.S.C. 249*. A claim against the seaman's employer should not be filed.

(b) Claims should not be asserted without HQ USAF/JACC's approval against:

(1) *Government contractors*. In claims in which the United States must reimburse the contractor for a claim according to the terms of the contract, an investigation into the claim is sent to HQ USAF/JACC by the base SJA. The file should contain recommendations regarding assertion and include citations to the specific contract clauses involved.

(2) *Foreign governments*. An investigation is made regarding any claim against foreign governments, their political subdivisions, armed forces members, or civilian employees. The claims files containing the investigation are sent to HQ USAF/JACC along with the base SJA's recommendations regarding assertion.

(3) *US personnel*. Claims are not asserted against members of the uniformed services; employees of the US, its agencies or instrumentalities; or an individual who is a dependent of a service member or employee at the time of assertion unless liability insurance will pay the claim.

(4) *Manufacturers of products in products liability cases*.

§ 842.120 Asserting the claim.

When asserting the claim, the base SJA will:

(a) Assert it against the third parties whose liability is based in tort using an SF 96, Notice of Claim. Mail the original and one copy to each of the third parties and a copy to the third parties' insurers, if known.

(b) Assert it against third parties or insurers whose liability is not based in tort using a formal letter written on Air Force stationery. The letter will include the facts and legal basis for liability. Bases for liability could include local foreign law, US status as a third party beneficiary under uninsured or underinsured motorist coverage, workers' compensation laws, and no fault statutes. The specific provision of the injured party's insurance contract should be cited where appropriate.

(c) Mail all copies of the SF 96, or claim notice on Air Force letterhead:

(1) By certified mail with return receipt requested in all claims in which the amount claimed is $5,000.00 or more or in which there is a substantial likelihood that the final amount claimed will be $5,000.00 or more.

(2) By regular or certified mail with return receipt requested at the SJA's discretion in cases in which the final amount claimed is less than $5,000.00, unless there is no response to the initial notice of claim within a reasonable period of time and a second notice of claim is required to be mailed. All second notices of claim and copies will be mailed by certified mail, return receipt requested.

(d) Notify the injured parties promptly in writing that the United States will attempt to recover from the third parties the reasonable value of medical care furnished or to be furnished and that they:

(1) Should seek advice from a legal assistance officer or civilian counsel and furnish the civilian counsel's name to the claims officer.

(2) Must cooperate in the prosecution of all actions of the United States against third parties.

(3) Must furnish a complete statement regarding the facts and circumstances surrounding the incident which caused the injury.

(4) Must not execute a release or settle any claim which exists as a result of the injury without prior notice to the SJA.

(5) Should read the enclosed Privacy Act statement.

§ 842.121 Referring a claim to the US Attorney.

Only HQ USAF/JACC authorizes referral of a claim to the US Attorney. The base SJA ensures review of all claims not later than 2 years after the date of the incident. These unsettled claims are forwarded, with the base SJA's disposition recommendation, to HQ USAF/JACC.

NOTE: On a case-by-case basis, HQ USAF/JACC will authorize referral of a case to the US Attorney by telephone.

§ 842.122 Statute of limitations.

The United States or the injured party on behalf of the United States must file suit within 3 years after an action accrues. This is usually 3 years after the initial treatment is provided in a federal medical facility or after the initial payment is made by CHAMPUS, whichever is first.

§ 842.123 Recovery rates in government facilities.

The FEDERAL REGISTER contains the rates set by the Office of Management and Budget, of which judges take judicial notice. HQ USAF/JACC can provide certified copies of the FEDERAL REGISTER upon request. Apply the rates in effect at the time of care to claims.

§ 842.124 Waiver and compromise of United States interest.

Waivers and compromises of government claims can be made. This paragraph lists the basic guidance for each action. (See § 842.117(e) for claims involving waiver and compromise of amounts in excess of settlement authorities' delegated amounts.)

(a) Waiver for the convenience of the government can be made when the tort-feasor:

(1) Cannot be located.

(2) Is judgment proof.

(3) Has refused to pay and the case is too weak for litigation.

(b) Waiver can be made when collection causes undue hardhsip to the injured party. Ordinarily, factors such as the following should be considered:

(1) Permanent disability or disfigurement.

(2) Decreased earning power.

(3) Out of pocket losses.

(4) Financial status of injured party.

(5) Pension rights.

(6) Other government benefits to the injured party.

(7) An offer of settlement from a third party which includes virtually all the thirty party's assets, although the amount is considerably less than the calculation of the injured party's damages.

(c) A compromise can be made upon written request from the injured party or the injured party's legal representative when liability is questionable, the injured party received excessive treatment, or the litigation risks dictate, and either of the following occurs:

(1) The injured party accepts less than the jury verdict expectancy. When this occurs, the Air Force should consider settling its claim in a ratio similar to that which the total sttlement bears to the jury verdict expectancy.

(2) The government's claim is almost as large as, or is larger than, the assets available for settlement.

§ 842.125 Reconsideration of a waiver for undue hardship.

A settlement authority may reconsider its disapproval of a waiver or compromise, when either:

(a) The injured party submits new evidence.

(b) Errors exist in claim submission or settlement.

Subpart O—Nonappropriated Fund Claims

§ 842.126 Scope of this subpart.

This subpart describes how to settle claims for and against the United States for property damage, personal injury, or death arising out of the operation of Nonappropriated Fund Instrumentalities (NAFIs).

§ 842.127 Definitions.

(a) *Army and Air Force Exchange Service (AAFES).* The Army and Air Force Exchange Service is a joint command of the Army and Air Force, under the jurisdiction of the Chiefs of Staff of the Army and Air Force, which provides exchange and motion picture services to authorized patrons.

(b) *Morale, welfare, and recreation (MWR) activities.* Air Force MWR activities are activities operated directly or by contract which provide programs to promote morale and well-being of the Air Force's military and civilian personnel and their dependents. They may be funded wholly with appropriated funds, primarily with nonappropriated funds (NAF), or with a combination of appropriated funds and NAFs.

(c) *Nonappropriated funds.* Nonappropriated funds are funds generated by Department of Defense military and civilian personnel and their dependents and used to augment funds appropriated by the Congress to provide a comprehensive morale-building, welfare, religious, educational, and recreational program, designed to improve the well-being of military and civilian personnel and their dependents.

(d) *Nonappropriated funds instrumentality.* A nonappropriated fund instrumentality is a Federal government instrumentality established to generate and administer nonappropriated funds for programs and services contributing to the mental and physical well-being of personnel.

§ 842.128 Delegations of authority.

(a) *Settlement authority:* (1) Each individual has the same delegated authority to settle a claim for which NAFs may be liable as that specified for a similar type claim in each subpart of this part. The decision of the settlement authority is binding upon the NAFI.

(2) The Judge Advocate General, in addition, has delegated authority to settle subparts F, G, and J type claims in any amount without referral to the Secretary of the Air Force or the General Accounting Office.

(3) The Chief, Deputy Chief, and Branch Chiefs, Claims and Tort Litigation Staff, in addition, have delegated authority to settle subparts F, G, and J type claims for $100,000 or less without referral to the Secretary of the Air

Force or the General Accounting Office.

(b) *Redelegation of authority*. A settlement authority may redelegate settlement authority to a subordinate judge advocate or civilian attorney, in writing.

(c) *Appellate authority*. Upon appeal, a settlement authority has the same authority specified in § 842.128(a). The Judge Advocate General is the final appellate authority on subpart F type claims without right of further appeal to the Secretary of the Air Force. However, no appellate authority below The Judge Advocate General may deny an appeal of a claim it had previously denied.

(d) *Authority to reduce, withdraw, and restore settlement authority*. Any superior settlement authority may reduce, withdraw, or restore delegated authority.

(e) *Settlement negotiations*. A settlement authority may settle a claim filed in any amount for a sum within its delegated authority. Send unsettled claims in excess of the delegated authority to the level with settlement authority. Unsuccessful negotiations at one level do not bind higher authority.

§ 842.129 Settlement of claims against NAFIs.

(a) This subpart does not establish legal theories for adjudication of claims. Refer to the appropriate subpart to decide whether a claim is payable (e.g., subpart D for personnel claims; subpart K for tort claims), then use the rules in this subpart to decide the appropriate funds for payment of any approved claim.

(b) Claims arising from property damage to or loss from vehicles or loss of personal items stored in base MWR facilities will be evaluated under the normal rules applied by the appropriate subpart of this part, and paid using the rules in those subparts. Examples include recreational vehicles stored in authorized lots and used cars parked in onbase sales lots. One exception to this rule is the exclusion of personal items stolen from onbase gym lockers (discussed below).

(1) If a NAF fee has been charged in connection with the use of the storage location, a determination must be made on the nature of the fee charged. If the fee does no more than reimburse NAF costs in administering or maintaining the storage location, subpart O of this part applies in addition to other appropriate subparts. If the fee is set to generate a profit for the NAFI involved or if it is collected in accordance with the terms of an agreement, express or implied, under which the NAFI represents that it will provide some degree of security or safeguarding of the property, the claim will be paid with NAF funds.

(2) Normally, theft of items from gym lockers will be paid out of appropriated funds providing there is affirmative evidence of theft. Mysterious loss of property will not be paid and, in no case, will a claim be paid in excess of $250.

§ 842.130 Payment of claims against NAFIs.

Substantiated claims against NAFIs must not be paid solely from appropriated funds. Claims are sent for payment as set out in this subpart. Do not delay paying a claimant because doubt exists whether to use appropriated funds or NAFs. Pay the claim initially from appropriated funds and decide the correct funding source later.

§ 842.131 Tort and tort type claims.

(a) *Claims within the scope of this subpart*. Claims which are within the scope of this subpart are those arising out of the operation of an MWR activity and are caused by:

(1) Civilian employees paid by a NAFI acting in the scope of their employment.

(2) Military personnel or appropriated fund civilian employees performing part-time duties for a NAFI for which a NAFI is paying.

(3) Negligent operation or condition of premises for which a NAFI is responsible.

(4) Members or authorized users of NAFI property. Such claims are subject to this subpart if the individual is a member of an MWR membership association or an authorized user of NAFI property and the use is in accord with applicable rules.

(b) *Claims not within the scope of this subpart*. Claims are not payable within the scope of this subpart if they arise out of the operation of an MWR activity supported by a NAFI and are caused by:

(1) Military personnel or appropriated fund civilian employees performing assigned Air Force duties, even though they benefit a NAFI.

(2) Negligent operation or condition of premises for which a NAFI is not responsible.

§ 842.132 Claims by NAFI employees.

Claims made by NAFI employees should be settled within the guidelines of this paragraph.

(a) *Personal injury in performance of duty and workers' compensation claims*. Claims for injuries arising out of performance of duty and workers' compensation claims are not within the scope of this subpart because the exclusive remedy is one of the following.

(1) Longshore and Harbor Workers' Compensation Act. This Act applies to NAFI civilian employees in the United States, its territories and possessions, and US citizen and resident NAFI civilian employees abroad.

(2) Local benefits for foreign national employees abroad.

(3) Military benefits because the injury is incident to service for offduty military personnel.

(b) *Property loss or damage incident to NAFI employment*. Claims for loss or damage to property incident to NAFI employment are settled under subpart D. Where appropriate, liability is computed, and initial demand is made upon the carrier, warehouse, or insurer, directing them to send further correspondence to the NAFI paying the claim.

§ 842.133 Claims by customers, members, participants, or authorized users.

(a) *Customer complaints*. Do not automatically adjudicate customer complaint claims until a determination is made that a valid claim exists. Complaints and personal property losses suffered by customers of MWR sales or service operations are normally not within the scope of this subpart. Customer complaints may not be claims at all. They may be no more than expressions of customer dissatisfactions. The activity manager is responsible for adjudicating and satisfying or otherwise disposing of a customer's complaint according to applicable NAFI regulations. Where possible, the activity manager resolves them by reimbursement, repair, or replacement in kind. However, if a complaint involving a claim cannot be satisfactorily settled under those procedures or includes a demand for consequential damage (such as for personal injury or property damage to other than the article purchased or serviced), process it as a tort claim.

(b) *Claims generated by concessionaires*. Most concessionaires must have commercial insurance. Any unresolved claims or complaints against concessionaires or their insurers are sent to the appropriate contracting officers.

§ 842.134 Claims in favor of NAFIs.

(a) *Tort claims*. Use the procedures set forth in subpart J or L, as appropriate.

(b) *Contract claims*. See AFR 176–9 or AFR 147–14, as appropriate.

(c) *Claims involving dishonored checks and debts to NAFIs*. See AFR 176–2 and 176–10 or AFR 147–14, as appropriate.

(d) *Third Party Workers' Compensation Claims*. NAF employees are provided workers' compensation benefits under the Longshore and Harbor Workers' Compensation Act (LHWCA) (33 U.S.C. 901, *et seq.*) as extended by the Nonappropriated Fund Instrumentalities Act (5 U.S.C. 8171–8173). For injuries suffered by NAFI employees in the course and scope of their employment where third parties are responsible for the injuries, the employing NAFIs are entitled to recover from the responsible third parties for the compensation and medical benefits paid to the injured employees (33 U.S.C. 933). Third party claims are pursued on behalf of employing NAFIs by the servicing staff judge advocate. A NAFI also has the right of offset against an employee's pay amounts recovered directly by the employee from third parties as provided in the LHWCA.

§ 842.135 Advance payments.

The procedures set out in subpart Q should be used for advance payments.

Do not delay paying a claimant because doubt exists whether to use appropriated funds or NAFIs. Pay the claim initially from appropriated claim funds and decide the correct funding source later.

§ 842.136 Claim payments and deposits.

Unless otherwise specified in this subpart, claims for payment (in two copies), collected funds for deposit, and international agreement bills for reimbursement should be sent as follows:

(a) *AAFES:* (1) Claims payable for more than $2500: HQ AAFES, Comptroller, Insurance Branch, P.O. Box 660202, Dallas, TX 75266–0202.

(2) Claims payable for $2500 or less: AAFES Operations Center (OSC-AC), 2727 LBJ Highway, Dallas TX 75266–0320.

(b) *Civilian base restaurants and civilian welfare NAFIs:* (1) For more than $100: Army and Air Force Civilian Welfare Fund, Washington, DC 20310.

(2) For $100 or less: The local NAFI giving rise to the claim.

(c) *All other NAFIs:* (1) For more than $50: HQ AFMPC/DPMSCI, Randolph AFB TX 78150–6001.

(2) For $50 or less: The local NAFI giving rise to the claim.

(d) *International agreement claims, all NAFIs.* When a receiving state pays a claim under an international agreement, the NAFI involved, upon receipt of an extract copy of the itemized bill, will forward payment of its pro rata share to the sending State office.

[55 FR 2809, Jan. 29, 1990, as amended at 56 FR 1574, Jan. 16, 1991]

Subpart P—Civil Air Patrol Claims (5 U.S.C. 8101(1)(B), 8102(a), 8116(c), 8141; 10 U.S.C. 9441, 9442; 36 U.S.C. 201–208)

§ 842.137 Scope of this subpart.

This subpart explains how to process certain administrative claims:

(a) Against the United States for property damage, personal injury, or death, arising out of Air Force noncombat missions performed by the Civil Air Patrol (CAP), as well as certain other Air Force authorized missions performed by the CAP in support of the Federal government.

(b) In favor of the United States for damage to US Government property caused by CAP members or third parties.

§ 842.138 Definitions.

(a) *Civil Air Patrol (CAP).* A federally chartered, non-profit corporation which was designated by Congress in 1948 as a volunteer civilian auxiliary of the Air Force.

(b) *Air Force noncombat mission.* Although not defined in any statute, an Air Force noncombat mission is any mission for which the Air Force is tasked, by statute, regulation, or higher authority, which does not involve actual combat, combat operations or combat training. The Air Force, in lieu of using Air Force resources, can use the services of the Civil Air Patrol to fulfill these type missions. When performing an Air Force noncombat mission, the Civil Air Patrol is deemed to be an instrumentality of the United States. In order for a mission to be a noncombat mission of the Air Force under this part, it must either:

(1) Have a special Air Force mission order assigned, and, the Air Force must exercise operational control over the mission.

(2) Involve a peacetime mission the Air Force is tasked to perform by higher authority which requires the expenditure of Air Force resources to accomplish, and the Air Force specifically approves the mission as a noncombat mission, and assigns the mission to the Civil Air Patrol to perform.

(c) *CAP members.* CAP members are private citizens who volunteer their time, services, and resources to accomplish CAP objectives and purposes. The two primary categories of members are:

(1) *Cadets.* Youths, 13 years (or having satisfactorily completed the sixth grade) through 17 years of age, who meet such prerequisites as the CAP corporation may establish from time to time. Cadet status may be retained until age 21.

(2) *Seniors.* Adults, 18 years of age or older (there is no maximum age), who meet such prerequisites as the CAP corporation may establish from time to

time, and who have not retained cadet status.

(d) *Liaison officers.* Active duty Air Force officers assigned to liaison duty at the national, regional, and wing (state) levels of CAP.

§ 842.139 Delegations of authority.

The appropriate subpart of this part under which the claim is being considered prescribes the authority to settle it.

§ 842.140 Proper claimants.

(a) Anyone suffering property damage, personal injury, or death arising from an Air Force noncombat mission or other specified Air Force authorized mission performed by CAP, who is also a proper claimant under the appropriate subpart of this part.

(b) The United States, for claims arising out of activities of CAP caused by negligent acts or omissions of CAP members or third parties.

§ 842.141 Improper claimants.

CAP members, 18 years of age or older, whose personal injury or death claim is subject to the Federal Employees' Compensation Act, are improper claimants. FECA is their exclusive remedy.

§ 842.142 Claims payable.

A claim is payable if all of the following are present:

(a) It is for property damage, personal injury, or death.

(b) It is proximately caused by a CAP member.

(c) It arises from an Air Force noncombat mission performed by the CAP, or arises from an authorized mission performed by the CAP for which specific coverage under this subpart is granted by HQ USAF/JACC.

(d) It is otherwise payable because it meets the provisions of an appropriate subpart of this part.

§ 842.143 Claims not payable.

A claim is not payable if it:

(a) Is for use or depreciation of privately owned property, operated by CAP or its members on an Air Force noncombat mission, or other specified Air Force authorized mission.

(b) Is for personal services or expenses incurred by CAP or its members while engaged in an Air Force noncombat mission, or other specified Air Force authorized mission.

(c) Arises out of a CAP incident based solely on government ownership of property on loan to CAP.

(d) Arises from a CAP activity not performed as a noncombat mission of the Air Force or as a specified Air Force authorized mission. These claims are sent to HQ CAP-USAF/JA for referral to CAP's private insurer, with a copy of the transmittal letter to HQ USAF/JACC.

Subpart Q—Advance Payments (10 U.S.C. 2736)

§ 842.144 Scope of this subpart.

It tells how to make an advance payment before a claim is filed or finalized under the Military Claims, Foreign Claims and National Guard Claims Acts.

§ 842.145 Delegation of authority.

(a) The Secretary of the Air Force has authority to make an advance payment of $100,000 or less.

(b) The Judge Advocate General has delegated authority to make an advance payment of $100,000 or less.

(c) The following individuals have delegated authority to make an advance payment of $25,000 or less:

(1) The Deputy Judge Advocate General.

(2) The Director of Civil Law.

(3) The Chief, Deputy Chief, and Branch Chiefs, Claims and Tort Litigation Staff.

(4) SJA of 9AF for CENTCOM, and the SJAs of PACAF and USAFE.

(d) This authority may be redelegated either orally or in writing. Oral redelegations should be confirmed in writing as soon as practical.

§ 842.146 Who may request.

A proper claimant or authorized agent may request an advance payment.

§ 842.147 When authorized.

Make advance payments only where all of the following exist:

(a) The potential claimant could file a valid claim for property damage or personal injury under the Military Claims, Foreign Claims, or National Guard Claims Acts.

(b) The potential claimant has an immediate need amounting to a hardship for food, shelter, medical or burial expenses, or other necessities. In the case of a commercial enterprise, severe financial loss or backruptcy will result if the Air Force does not make an advance payment.

(c) Other resources for such needs are not reasonably available.

(d) The potential claim equals or exceeds the amount of the advance payment.

(e) The recipient signs as advance payment agreement.

§ 842.148 When not authorized.

Do not make an advance payment if the claim is payable under the:

(a) Federal Tort Claims Act.

(b) International Agreement Claims Act.

(c) Military Personnel and Civilian Employees' Claims Act. (Separate regulations issued under the Act provide for partial payments.)

§ 842.149 Separate advance payment claims.

Every person suffering injury or property loss may submit a separate request for an advance payment. For example, where the Air Force destroys a house containing a family of four, each family member may submit a separate request for and receive an advance payment of $100,000 or less.

§ 842.150 Liability for repayment.

The claimant is liable for repayment. Deduct the advance payment from any award or judgment given to a claimant. Reimbursement from the claimant will be sought if the claimant does not file a claim or lawsuit.

PART 845—COUNSEL FEES AND OTHER EXPENSES IN FOREIGN TRIBUNALS

Sec.

845.1 Purpose.
845.2 Statutory authority.
845.3 Responsibility.
845.4 Criteria for the provision of counsel and payment of expenses in criminal cases.
845.5 Provision of bail in criminal cases.
845.6 Criteria for the provision of counsel and payment of expenses in civil cases.
845.7 Procedures for hiring counsel and obligating funds.
845.8 Payment of counsel fees and other expenses.
845.9 Appropriated funds chargeable.
845.10 Reimbursement.
845.11 Correspondence.

AUTHORITY: Sec. 8012, 70A Stat. 488, sec. 1037, 72 Stat. 1445; 10 U.S.C. 8012, 1037.

SOURCE: 44 FR 75633, Dec. 21, 1979, unless otherwise noted.

NOTE: This part is derived from chapter 2 of Air Force Regulation 110–12, December 1, 1978.

Part 806 of this chapter states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the material referenced herein.

§ 845.1 Purpose.

This part establishes criteria and assigns responsibility for the provision of counsel, for the provision of bail, and for the payment of court costs and other necessary and reasonable expenses incident to representation in civil and criminal proceedings, including appellate proceedings, before foreign courts and foreign administrative agencies, which involve members of the Armed Forces, civilian personnel and dependents. Payment of fines is not authorized hereunder.

§ 845.2 Statutory authority.

10 U.S.C. 1037 provides authority for employment of counsel, and payment of counsel fees, court costs, bail, and other expenses incident to representation of persons subject to the Uniform Code of Military Justice before foreign tribunals. For personnel not subject to the Uniform Code of Military Justice, funds for similar expenses may be made available in cases of exceptional interest to the service concerned, upon prior application through the Judge Advocate General of the service concerned, to the appropriate service secretary.

§ 845.3 Responsibility.

(a) Requests for provision of counsel, provision of bail, or payment of expenses will ordinarily be made by the defendant or accused through appropriate channels to the officer exercising general court-martial jurisdiction over him. This officer shall determine whether the request meets the criteria prescribed herein and, based upon such determination, shall take final action approving or disapproving the request. Within their geographical areas of responsibility, major commands in the interest of obtaining prompt and effective legal service may appoint as approval authority, instead of the officer exercising general court-martial jurisdiction, any subordinate officer having responsibility in a particular country for personnel subject to foreign criminal jurisdiction.

(b) Notwithstanding the criteria prescribed below, an officer exercising approved authority may, in his discretion, deny a request for the provision of counsel, provision of bail or payment of expenses, where the otherwise eligible requestor is in an absent without leave or deserter status at the time of the request, or otherwise is not then subject to United States military control, and there is no reasonable basis for the belief that the requestor will return to United States military control at the conclusion of the proceedings of service of an adjudged sentence, if any.

§ 845.4 Criteria for the provision of counsel and payment of expenses in criminal cases.

Requests for the provision of counsel and payment of expenses in criminal cases may be approved in pretrial, trial, appellate and posttrial proceedings in any one of the following criminal cases:

(a) Where the act complained of occurred in the performance of official duty; or

(b) Where the sentence which is normally imposed includes confinement, whether or not such sentence is suspended; or

(c) Where capital punishment might be imposed; or

(d) Where an appeal is made from any proceeding in which there appears to have been a denial of the substantial rights of the accused; or

(e) Where conviction of the offense alleged could later form the basis for administrative discharge proceedings for misconduct as a result of civil court disposition; or

(f) Where the case, although not within the criteria established in paragraphs (a), (b), (c), (d), or (e) of this section, is considered to have significant impact upon the relations of US forces with the host country or is considered to involve any other particular US interest.

§ 845.5 Provision of bail in criminal cases.

Funds for the posting of bail or bond to secure the release of personnel from confinement by foreign authorities before, during, or after trial may be furnished in all criminal cases. Safeguards should be imposed to assure that at the conclusion of the proceedings or on the appearance of the defendant in court, the bail or bond will be refunded to the military authorities. Bail will be provided only to guarantee the presence of the defendant and will not be provided to guarantee the payment of fines or civil damages. Local US military authorities are expected to provide bail, in any case, only after other reasonable efforts have been made to secure release of pretrial custody to the US.

§ 845.6 Criteria for the provision of counsel and payment of expenses in civil cases.

Requests for provision of counsel and payment of expenses in civil cases may be granted in trial and appellate proceedings in either of the following civil cases:

(a) Where the act complained of occurred in the performance of official duty; or

(b) Where the case is considered to have a significant impact upon the relations of US forces with the host country or is considered to involve any other particular US interest. No funds shall be provided under this part in cases where the United States of America is in legal effect the defendant, without prior authorization of the Judge Advocate General.

§ 845.7 Procedures for hiring counsel and obligating funds.

(a) The selection of individual trial or appellate counsel will be made by the defendant. Such counsel shall represent the individual defendant and not the US Government. Selection shall be made from approved lists of attorneys who are qualified, competent and experienced in trial practice, and admitted for full practice, on their own account, before the courts of the foreign country involved. Normally, these lists will be coordinated with the local court or bar association, if any, and the appropriate US Diplomatic or Consular Mission and should include only those attorneys who are known or reputed, to comply with local attorney fee schedules or guides approved or suggested by local bar associations and should not exceed amounts paid under similar circumstances by nationals of the country where the trial is held. No fee may include any amount in payment for services other than those incident to representation before judicial and administrative agencies of the foreign country in the particular case for which the contract is made, and in no event may any contract include fees for representation in habeas corpus or related proceedings before tribunals of the United States. When appropriate and reasonable in the case, the payment of expenses, in addition to counsel fees, may include court costs, bail costs, charges for obtaining copies of records, printing and filing fees, interpreter fees, witness fees, and other necessary and reasonable expenses. Expenses will not include the payment of fines or civil damages, directly or indirectly.

(b) Whenever possible, the officer responsible under § 845.3 (or his designee), acting on behalf of the United States of America, shall enter into a written contract with the selected counsel. The contract will cover counsel fees, and, when appropriate, may cover other costs arising in defense of the case only in the court of first instance and will not include fees for representation on appeal. If the case is appealed to higher tribunals, supplemental agreements shall be executed for each appeal. A copy of the contractual agreement shall serve as the obligating document.

(c) If, for example, because of unusual circumstances or local customs, it is not practicable to enter into a written contract as in paragraph (b) of this section, action will be taken to record the agreement reached between the officer responsible under § 845.3 (or his designee) and the selected counsel. This requirement may be met by a letter of commission or letter of understanding, executed between the officer responsible under § 845.3 (or his designee) and the selected counsel, or by a written request for legal services expressly or impliedly accepted by the selected counsel. Any such document shall contain, if possible, an agreed estimate of counsel fees and reasonable expenses and a statement that both fees and expenses will conform to those paid by local nationals under similar circumstances and will not exceed local fee schedules, if any. If this document does not include an agreed estimate of counsel fees and other reasonable expenses, an estimate will be provided by the contracting officer. A copy of the document, together with the estimate, will be furnished the accounting component and will serve as the commitment document for the reservation of funds.

(d) The provision of counsel and payment of expenses under this part is not subject to the provisions of the Defense Acquisition Regulation (subchapter A, chapter I of this title). However, the contract clauses set forth in part 5, section VII, Defense Acquisition Regulation, may be used as a guide in contracting.

(e) Because of the desirability of timely procedural action, it is suggested that there be designated, from among the judge advocates on the staffs of officers responsible under § 845.3, contracting officers with contracting authority limited to agreements described in this section. The effect of this designation would be to combine within one office the duties of contracting officer and judge advocate.

(f) Nothing in this part shall be construed as prohibiting the selection of qualified local counsel employed by the United States Government, if the serviceman freely selects such counsel.

§ 845.8 Payment of counsel fees and other expenses.

Payment of bills submitted by the selected counsel and other costs shall be made in accordance with the general provision of AFM 177–102 (Commercial Transactions at Base Level), relating to payment of contractual obligations and pertinent disbursing regulations. All payments under these procedures will be in local currency. Acceptance of services procured under these procedures shall be certified to by the officer responsible under § 845.3 (or his designee). Payments of bail may be made when authorized by such officers. Such authorization shall be in the form of a directing letter or message citing 10 U.S.C. 1037.

§ 845.9 Appropriated funds chargeable.

Authorized expenses incurred incident to implementation of the policies set forth in this part, including transportation and per diem expenses of trial observers, interpreters, and local counsel employees, shall be paid from appropriated funds of the service to which the defendant belongs. Payments shall be made from the appropriation current at time of payment, unless obligations for authorized costs have previously been established. Refunds shall be processed as appropriation refund. Such funds are chargeable to the base for operation and maintenance purposes (O&M or R&D, as applicable).

§ 845.10 Reimbursement.

No reimbursement will ordinarily be required from individuals with respect to payments made in their behalf under this part. However, prior to the posting of bail on behalf of a defendant, a signed agreement shall be secured from him wherein he agrees to remit the amount of such bail or permit the application of so much of his pay as may be necessary to reimburse the Government in the event that he willfully causes forfeiture of bail. In the event of such forfeiture, bail provided under this part shall be recovered from the defendant in accordance with that agreement. The agreement should include a statement that it does not prejudice the defendant's right to appeal to the Comptroller General of the United States and the courts after such payment or deduction has been made, if he considers the amount erroneous.

§ 845.11 Correspondence.

Judge advocates who advise officers responsible under § 845.3 are authorized to correspond directly with each other and with the Judge Advocate General of the service concerned for advice with regard to payment of counsel fees and other expenses.

SUBCHAPTER E—SECURITY [RESERVED]

SUBCHAPTER F—AIRCRAFT

PART 855—CIVIL AIRCRAFT USE OF UNITED STATES AIR FORCE AIRFIELDS

Subpart A—General Provisions

Sec.
855.1 Policy.
855.2 Responsibilities.
855.3 Applicability.

Subpart B—Civil Aircraft Landing Permits

855.4 Scope.
855.5 Responsibilities and authorities.
855.6 Aircraft exempt from the requirement for a civil aircraft landing permit.
855.7 Conditions for use of Air Force airfields.
855.8 Application procedures.
855.9 Permit renewal.
855.10 Purpose of use.
855.11 Insurance requirements.
855.12 Processing a permit application.
855.13 Civil fly-ins.
855.14 Unauthorized landings.
855.15 Detaining an aircraft.
855.16 Parking and storage.
855.17 Fees for landing, parking, and storage fees.
855.18 Aviation fuel and oil purchases.
855.19 Supply and service charges.

Subpart C—Agreements for Civil Aircraft Use of Air Force Airfields

855.20 Joint-use Agreements.
855.21 Procedures for sponsor.
855.22 Air Force procedures.
855.23 Other agreements.

TABLE 1 TO PART 855—PURPOSE OF USE/VERIFICATION/APPROVAL AUTHORITY/FEES
TABLE 2 TO PART 855—AIRCRAFT LIABILITY COVERAGE REQUIREMENTS
TABLE 3 TO PART 855—LANDING FEES
TABLE 4 TO PART 855—PARKING AND STORAGE FEES
ATTACHMENT 1 TO PART 855—GLOSSARY OF REFERENCES, ABBREVIATIONS, ACRONYMS, AND TERMS
ATTACHMENT 2 TO PART 855—WEATHER ALTERNATE LIST
ATTACHMENT 3 TO PART 855—LANDING PERMIT APPLICATION INSTRUCTIONS
ATTACHMENT 4 TO PART 855—SAMPLE JOINT-USE AGREEMENT
ATTACHMENT 5 TO PART 855—SAMPLE TEMPORARY AGREEMENT

AUTHORITY: 49 U.S.C. 44502 and 47103.

SOURCE: 60 FR 37349, July 20, 1995, unless otherwise noted.

Subpart A—General Provisions

§ 855.1 Policy.

The Air Force establishes and uses its airfields to support the scope and level of operations necessary to carry out missions worldwide. The Congress funds airfields in response to Air Force requirements, but also specifies that civil aviation access is a national priority to be accommodated when it does not jeopardize an installation's military utility. The Air Force engages in dialogue with the civil aviation community and the Federal Aviation Administration to ensure mutual understanding of long-term needs for the national air transportation system and programmed military force structure requirements. To implement the national policy and to respond to requests for access, the Air Force must have policies that balance such requests with military needs. Civil aircraft access to Air Force airfields on foreign territory requires host nation approval.

(a) The Air Force will manage two programs that are generally used to grant civil aircraft access to its airfields: civil aircraft landing permits and joint-use agreements. Other arrangements for access will be negotiated as required for specific purposes.

(1) Normally, landing permits will be issued only for civil aircraft operating in support of official Government business. Other types of use may be authorized if justified by exceptional circumstances. Access will be granted on an equitable basis.

(2) The Air Force will consider only proposals for joint use that do not compromise operations, security, readiness, safety, environment, and quality of life. Further, only proposals submitted by authorized local Government representatives eligible to sponsor a public airport will be given the comprehensive evaluation required to conclude a joint-use agreement.

(3) Any aircraft operator with an inflight emergency may land at any Air Force airfield without prior authorization. An inflight emergency is

defined as a situation that makes continued flight hazardous.

(b) Air Force requirements will take precedence on Air Force airfields over all civil aircraft operations, whether they were previously authorized or not.

(c) Civil aircraft use of Air Force airfields in the United States will be subject to Federal laws and regulations. Civil aircraft use of Air Force airfields in foreign countries will be subject to US Federal laws and regulations that have extraterritorial effect and to applicable international agreements with the country in which the Air Force installation is located.

§ 855.2 Responsibilities.

(a) As the program manager for joint use, the Civil Aviation Branch, Bases and Units Division, Directorate of Operations (HQ USAF/XOOBC), ensures that all impacts have been considered and addressed before forwarding a joint-use proposal or agreement to the Deputy Assistant Secretary for Installations (SAF/MII), who holds decision authority. All decisions are subject to the environmental impact analysis process as directed by the Environmental Planning Division, Directorate of Environment (HQ USAF/CEVP), and the Deputy Assistant Secretary for Environment, Safety, and Occupational Health (SAF/MIQ). The Air Force Real Estate Agency (AFREA/MI) handles the leases for Air Force-owned land or facilities that may be included in an agreement for joint use.

(b) HQ USAF/XOOBC determines the level of decision authority for landing permits. It delegates decision authority for certain types of use to major commands and installation commanders.

(c) HQ USAF/XOOBC makes the decisions on all requests for exceptions or waivers to this part and related Air Force instructions. The decision process includes consultation with other affected functional area managers when required. Potential impacts on current and future Air Force policies and operations strongly influence such decisions.

(d) Major commands, direct reporting units, and field operating agencies may issue supplements to establish command-unique procedures permitted by and consistent with this part.

§ 855.3 Applicability.

This part applies to all regular United States Air Force (USAF), Air National Guard (ANG), and United States Air Force Reserve (USAFR) installations with airfields. This part also applies to civil aircraft use of Air Force ramps at civil airports hosting USAF, ANG, and USAFR units.

Subpart B—Civil Aircraft Landing Permits

§ 855.4 Scope.

Air Force airfields are available for use by civil aircraft so far as such use does not interfere with military operations or jeopardize the military utility of the installation. Access will be granted on an equitable basis. Air Force requirements take precedence over authorized civil aircraft use. This part carries the force of US law, and exceptions are not authorized without prior approval from the Civil Aviation Branch, Bases and Units Division, Directorate of Operations, (HQ USAF/XOOBC), 1480 Air Force Pentagon, Washington DC 20330–1480. Proposed exceptions or waivers are evaluated as to current and future impact on Air Force policy and operations.

§ 855.5 Responsibilities and authorities.

(a) The Air Force:

(1) Determines whether civil aircraft use of Air Force airfields is compatible with current and planned military activities.

(2) Normally authorizes civil aircraft use of Air Force airfields only in support of official Government business. If exceptional circumstances warrant, use for other purposes may be authorized.

(3) Acts as clearing authority for civil aircraft use of Air Force airfields, subject to the laws and regulations of the US, or to applicable international agreements (e.g., status of forces agreements) with the country in which the Air Force installation is located.

(4) Reserves the right to suspend any operation that is inconsistent with national defense interests or deemed not in the best interests of the Air Force.

(5) Will terminate authority to use an Air Force airfield if the:

(i) User's liability insurance is canceled.

(ii) User lands for other than the approved purpose of use or is otherwise in violation of this part or clearances and directives hereunder.

(6) Will not authorize use of Air Force airfields:

(i) In competition with civil airports by providing services or facilities that are already available in the private sector.

NOTE: Use to conduct business with or for the US Government is not considered as competition with civil airports.

(ii) Solely for the convenience of passengers or aircraft operator.

(iii) Solely for transient aircraft servicing.

(iv) By civil aircraft that do not meet US Department of Transportation operating and airworthiness standards.

(v) That selectively promotes, benefits, or favors a specific commercial venture unless equitable consideration is available to all potential users in like circumstances.

(vi) For unsolicited proposals in procuring Government business or contracts.

(vii) Solely for customs-handling purposes.

(viii) When the air traffic control tower and base operations are closed or when a runway is restricted from use by all aircraft.

NOTE: Requests for waiver of this provision must address liability responsibility, emergency response, and security.

(7) Will not authorize civil aircraft use of Air Force ramps located on civil airfields.

NOTE: This section does not apply to use of aero club facilities located on Air Force land at civil airports, or civil aircraft chartered by US military departments and authorized use of terminal facilities and ground handling services on the Air Force ramp. Only the DD Form 2400, Civil Aircraft Certificate of Insurance, and DD Form 2402, Civil Aircraft Hold Harmless Agreement, are required for use of Air Force ramps on civil airfields.

(b) Civil aircraft operators must:

(1) Have an approved DD Form 2401, Civil Aircraft Landing Permit, before operating at Air Force airfields, except for emergency use and as indicated in paragraphs (d)(2) and (d)(2)(iii)(E) of this section, and , and § 855.13(b)(1)(ii).

(2) Ensure that pavement load-bearing capacity will support the aircraft to be operated at the Air Force airfield.

(3) Ensure that aircraft to be operated at Air Force airfields are equipped with an operating two-way radio capable of communicating with the air traffic control tower.

(4) Obtain final approval for landing from the installation commander or a designated representative (normally base operations) at least 24 hours prior to arrival.

(5) Not assume that the landing clearance granted by an air traffic control tower facility is a substitute for either the approved civil aircraft landing permit or approval from the installation commander or a designated representative (normally base operations).

(6) Obtain required diplomatic or overflight clearance before operating in foreign airspace.

(7) Pay applicable costs and fees.

(8) File a flight plan before departing the Air Force airfield.

(c) The installation commander or a designated representative:

(1) Exercises administrative and security control over both the aircraft and passengers while on the installation.

(2) May require civil users to delay, reschedule, or reroute aircraft arrivals or departures to preclude interference with military activities.

(3) Cooperates with customs, immigration, health, and other public authorities in connection with civil aircraft arrival and departure.

(d) Decision Authority: The authority to grant civil aircraft use of Air Force airfields is vested in:

(1) Directorate of Operations, Bases and Units Division, Civil Aviation Branch (HQ USAF/XOOBC). HQ USAF/XOOBC may act on any request for civil aircraft use of an Air Force airfield. Decision authority for the following will not be delegated below HQ USAF:

(i) Use of multiple Air Force airfields except as designated in paragraph (d)(2) of this section.

(ii) Those designated as 2 under Approval Authority in Table 1 to this part.

(iii) Any unusual or unique purpose of use not specifically addressed in this part.

(2) Major Command, Field Operating Agency, Direct Reporting Unit, or Installation Commander. With the exception of those uses specifically delegated to another decision authority, major commands (MAJCOMs), field operating agencies (FOAs), direct reporting units (DRUs) and installation commanders or designated representatives have the authority to approve or disapprove civil aircraft landing permit applications (DD Forms 2400, Civil Aircraft Certificate of Insurance; 2401; Civil Aircraft Landing Permit, and 2402, Civil Aircraft Hold Harmless Agreement) at airfields for which they hold oversight responsibilities. Additionally, for expeditious handling of short notice requests, they may grant requests for one-time, official Government business flights that are in the best interest of the US Government and do not violate other provisions of this part. As a minimum, for one-time flights authorized under this section, the aircraft owner or operator must provide the decision authority with insurance verification and a completed DD Form 2402 before the aircraft operates into the Air Force airfield. Air Force authority to approve civil aircraft use of Air Force airfields on foreign soil may be limited. Commanders outside the US must be familiar with base rights agreements or other international agreements that may render inapplicable, in part or in whole, provisions of this part. Decision authority is delegated for specific purposes of use and or locations as follows:

(i) Commander, 611th Air Operations Group (AOG). The Commander, 611th AOG or a designated representative may approve commercial charters, on a case-by-case basis, at all Air Force airfields in Alaska, except Eielson and Elmendorf AFBs, if the purpose of the charter is to transport goods and or materials, such as an electric generator or construction materials for a community center, for the benefit of remote communities that do not have adequate civil airports.

(ii) Commander, Air Mobility Command (AMC). The Commander, AMC or a designated representative may approve permits that grant landing rights at Air Force airfields worldwide in support of AMC contracts.

(iii) US Defense Attache Office (USDAO). The USDAO, acting on behalf of HQ USAF/XOOBC, may grant a request for one-time landing rights at an Air Force airfield provided:

(A) The request is for official Government business of either the US or the country to which the USDAO is accredited.

(B) The Air Force airfield is located within the country to which the USDAO is accredited.

(C) Approval will not violate any agreement with the host country.

(D) The installation commander concurs.

(E) The USDAO has a properly completed DD Form 2402 on file and has verified that the insurance coverage meets the requirements of Table 2 to this part, before the aircraft operates into the Air Force airfield.

§ 855.6 Aircraft exempt from the requirement for a civil aircraft landing permit.

(a) Any aircraft owned by:

(1) Any other US Government agency.

(2) US Air Force aero clubs established as prescribed in AFI 34–117, Air Force Aero Club Program, and AFMAN 3–132, Air Force Aero Club Operations[1].

NOTE: This includes aircraft owned by individuals but leased by an Air Force aero club.

(3) Aero clubs of other US military services.

NOTE: This includes aircraft owned by individuals but leased by Army or Navy aero clubs.

(4) A US State, County, Municipality, or other political subdivision, when operating to support official business at any level of Government.

(b) Any civil aircraft under:

(1) Lease or contractual agreement for exclusive US Government use on a long-term basis and operated on official business by or for a US Government agency; for example, the Federal

[1] Copies of the publications are available, at cost, from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

Aviation Administration (FAA), Department of the Interior, or Department of Energy.

NOTE: The Government must hold liability responsibility for all damages or injury associated with operation of the aircraft.

(2) Lease or contractual agreement to the Air Force for Air Force Civil Air Patrol (CAP) liaison purposes and operated by an Air Force CAP liaison officer on official Air Force business.

(3) CAP control for a specific mission directed by the Air Force.

(4) Coast Guard control for a specific mission directed by the Coast Guard.

NOTE: For identification purposes, the aircraft will be marked with a sticker near the port side door identifying it as a Coast Guard Auxiliary aircraft. The pilot will always be in uniform and normally have a copy of a Coast Guard Auxiliary Patrol Order. If the aircraft is operating under "verbal orders of the commander," the pilot can provide the telephone number of the cognizant Coast Guard commander.

(5) Contractual agreement to any US, State, or local Government agency in support of operations involving safety of life or property as a result of a disaster.

(6) Government furnished property or bailment contract for use by a contractor, provided the Federal, State, or local Government has retained liability responsibilities.

(7) Civil aircraft transporting critically ill or injured individuals or transplant organs to or from an Air Force installation.

(8) Historic aircraft being delivered for Air Force museum exhibits under the provisions of AFI 84–103, Museum System.[2]

§ 855.7 Conditions for use of Air Force airfields.

The Air Force authorizes use of its airfields for a specific purpose by a named individual or company. The authorization cannot be transferred to a second or third party and does not extend to use for other purposes. An approved landing permit does not obligate the Air Force to provide supplies, equipment, or facilities other than the landing, taxiing, and parking areas. The aircraft crew and passengers are only authorized activities at the installation directly related to the purpose for which use is granted. All users are expected to submit their application (DD Forms 2400, 2401, and 2402) at least 30 days before intended use and, except for use as a weather alternate, CRAF alternate, or emergency landing site, must contact the appropriate installation commander or a designated representative for final landing approval at least 24 hours before arrival. Failure to comply with either time limit may result in denied landing rights.

§ 855.8 Application procedures.

To allow time for processing, the application (DD Forms 2400, 2401, and 2402) and a self-addressed, stamped envelope should be submitted at least 30 days before the date of the first intended landing. The verification required for each purpose of use must be included with the application. The name of the user must be the same on all forms. Original, hand scribed signatures, not facsimile elements, are required on all forms. Landing Permit Application Instructions are at attachment 3 to this part. The user is responsible for reviewing this part and accurately completing the forms before submitting them to the approving authority.

§ 855.9 Permit renewal.

When a landing permit expires, DD Forms 2401 and 2400 must be resubmitted for continued use of Air Force airfields.

NOTE: Corporations must resubmit the DD Form 2402 every five years.

§ 855.10 Purpose of use.

The purposes of use normally associated with civil aircraft operations at Air Force airfields are listed in Table 1. Requests for use for purposes other than those listed will be considered and may be approved if warranted by unique circumstances. A separate DD Form 2401 is required for each purpose of use. (Users can have multiple DD Forms 2401 that are covered by a single DD Form 2400 and DD Form 2402.)

§ 855.11 Insurance requirements.

Applicants must provide proof of third-party liability insurance on a DD Form 2400, with the amounts stated in

[2] See footnote 1 to § 855.6.

US dollars. The policy number, effective date, and expiration date are required. The statement "until canceled" may be used in lieu of a specific expiration date. The geographic coverage must include the area where the Air Force airfield of proposed use is located. If several aircraft or aircraft types are included under the same policy, a statement such as "all aircraft owned," "all aircraft owned and or operated," "all non-owned aircraft," or "all aircraft operated," may be used in lieu of aircraft registration numbers. To meet the insurance requirements, either split limit coverage for bodily injury (individuals outside the aircraft), property damage, and passengers, or a single limit coverage is required. The coverage will be at the expense of the user with an insurance company acceptable to the Air Force. Coverage must be current during the period the Air Force airfield will be used. The liability required is computed on the basis of aircraft maximum gross takeoff weight (MGTOW) and passenger or cargo configuration. Minimum coverage will not be less than the amount indicated in Table 2 to this part.

(a) Any insurance presented as a single limit of liability or a combination of primary and excess coverage will be an amount equal to or greater than the each accident minimums indicated in Table 2 to this part for bodily injury (individuals outside the aircraft), property damage, and passengers.

(b) The policy will specifically provide that:

(1) The insurer waives any right of subrogation it may have against the US by reason of any payment made under the policy for injury, death, or property damage that might arise, out of or in connection with the insured's use of any Air Force airfield.

(2) The insurance afforded by the policy applies to the liability assumed by the insured under DD Form 2402.

(3) If the insurer or the insured cancels or reduces the amount of insurance afforded under the listed policy before the expiration date indicated on DD Form 2400, the insurer will send written notice of policy cancellation or coverage reduction to the Air Force approving authority at least 30 days before the effective date of the cancellation or reduction. The policy must state that any cancellation or reduction will not be effective until at least 30 days after such notice is sent.

§ 855.12 Processing a permit application.

Upon receipt of an application (DD Forms 2400, 2401, and 2402) for use of an Air Force airfield, the decision authority:

(a) Determines the availability of the airfield and its capability to accommodate the purpose of use requested.

(b) Determines the validity of the request and ensures all entries on DD Forms 2400, 2401, and 2402 are in conformance with this part.

(c) Approves DD Form 2401 (with conditions or limitations noted) by completing all items in Section II—For Use by Approving Authority as follows:

(1) Period of Use (Block 7): The "From" date will be either the first day of approved use or the first day of insurance coverage. The "From" date cannot precede the first day of insurance coverage shown on the DD Form 2400. The "Thru" date is determined by the insurance expiration date and or the purpose of use. For example, the period of use for participants in an Air Force open house will be determined by both insurance coverage and open house dates. The permit would be issued only for the duration of the open house but must not precede or exceed the dates of insurance coverage. Many insurance policies terminate at noon on the expiration date. Therefore, if the insurance expiration is used to determine the permit expiration date, the landing permit will expire one day before the insurance expiration date shown on the DD Form 2400. If the insurance expiration date either exceeds 2 years or is indefinite (for example, "until canceled"), the landing permit will expire 2 years from the issue date or first day of coverage.

(2) Frequency of Use (Block 8) is normally "as required" but may be more specific, such as "one time."

(3) Identification Number (Block 9): Installation commanders or a designated representative assign a permit number comprised of the last three letters of the installation's International Civil Aviation Organization identifier code, the last two digits of the calendar

year, a number sequentially assigned, and the letter suffix that indicates the purpose of use (Table 1); for example, ADW 95–01C. MAJCOMs, FOAs, DRUs, and USDAOs use a three position organization abbreviation; such as AMC 95–02K.

(4) DD Form 2400 (Dated and Filed) (Block 11a): This block should contain the date from block 1 (Date Issued) on the DD Form 2400 and the identification of the unit or base where the form was approved; i.e., 30 March 1995, HQ USAF/XOOBC.

(5) DD Form 2402 (Dated and Filed) (Block 11b): This block should contain the date from block 4 (Date Signed) on the DD Form 2402 and the identification of the unit or base where the form was approved; i.e., 30 March 1995, HQ USAF/XOOBC.

(6) SA-ALC/SFR, 1014 Andrews Road, Building 1621, Kelly AFB TX 78241–5603 publishes the list of companies authorized to purchase Air Force fuel on credit. Block 12 should be marked "yes" only if the permit holder's name appears on the SA-ALC list.

(7) Landing Fees, Block 13, should be marked as indicated in Table 1 to this part.

(8) Permit Amendments: New entries or revisions to an approved DD Form 2401 may be made only by or with the consent of the approving authority.

(d) Provides the applicant with written disapproval if:

(1) Use will interfere with operations, security, or safety.

(2) Adequate civil facilities are collocated.

(3) Purpose of use is not official Government business and adequate civil facilities are available in the proximity of the requested Air Force airfield.

(4) Use will constitute competition with civil airports or air carriers.

(5) Applicant has not fully complied with this part.

(e) Distributes the approved DD Form 2401 before the first intended landing, when possible, as follows:

(1) Retains original.

(2) Returns two copies to the user.

(3) Provides a copy to HQ USAF/XOOBC.

NOTE: HQ USAF/XOOBC will provide a computer report of current landing permits to the MAJCOMs, FOAs, DRUs, and installations.

§ 855.13 Civil fly-ins.

(a) Civil aircraft operators may be invited to a specified Air Force airfield for:

(1) A base open house to perform or provide a static display.

(2) A flying safety seminar.

(b) Civil fly-in procedures:

(1) The installation commander or a designated representative:

(i) Requests approval from the MAJCOM, FOA, or DRU with an information copy to HQ USAF/XOOBC/XOOO and SAF/PAC.

(ii) Ensures that DD Form 2402 is completed by each user.

NOTE: DD Forms 2400 and 2401 are not required for fly-in participants if flying activity consists of a single landing and takeoff with no spectators other than flightline or other personnel required to support the aircraft operations.

(2) The MAJCOM, FOA, or DRU ensures HQ USAF/XOOBC/XOOO and SAF/PAC are advised of the approval or disapproval for the fly-in.

(3) Aerial performance by civil aircraft at an Air Force open house requires MAJCOM or FOA approval and an approved landing permit as specified in AFI 35–201, Community Relations[3]. Regardless of the aircraft's historic military significance, DD Forms 2400, 2401, and 2402 must be submitted and approved before the performance. The permit can be approved at MAJCOM, FOA, DRU, or installation level. Use will be authorized only for the period of the event. Fly-in procedures do not apply to aircraft transporting passengers (revenue or non-revenue) for the purpose of attending the open house or demonstration flights associated with marketing a product.

§ 855.14 Unauthorized landings.

(a) *Unauthorized landing procedures.* The installation commander or a designated representative will identify an unauthorized landing as either an emergency landing, an inadvertent landing, or an intentional landing. An unauthorized landing may be designated as inadvertent or intentional whether or not the operator has knowledge of the provisions of this part, and whether or not the operator filed a

[3] See footnote 1 to § 855.6.

flight plan identifying the installation as a destination. Aircraft must depart the installation as soon as practical. On all unauthorized landings, the installation commander or a designated representative:

(1) Informs the operator of subpart B procedures and the requirement for notifying the Federal Aviation Administration (FAA) as specified in section 6 of the FAA Airman's Information Manual.

(2) Notifies the Federal Aviation Flight Standards District Office (FSDO) by telephone or telefax, followed by written notification using FAA Form 8020–9, 8020–11, or 8020–17, as appropriate. A copy of the written notification must be provided to HQ USAF/XOOBC.

(3) Ensures the operator completes a DD Form 2402, and collects applicable charges. (In some instances, it may be necessary to arrange to bill the user for the appropriate charges.) DD Form 2402 need not be completed for commercial carriers if it is known that the form is already on file at HQ USAF/XOOBC.

(4) In a foreign country, notifies the local US Defense Attache Office (USDAO) by telephone or telefax and, where applicable, the appropriate USDAO in the country of aircraft registry, followed by written notification with an information copy to HQ USAF/XOOBC and the civil aviation authority of the country or countries concerned.

(b) *Emergency landings.* Any aircraft operator who experiences an inflight emergency may land at any Air Force airfield without prior authorization (approved DD Form 2401 and 24 hours prior notice). An inflight emergency is defined as a situation that makes continued flight hazardous.

(1) The Air Force will use any method or means to clear an aircraft or wreckage from the runway to preclude interference with essential military operations after coordinating with the FSDO and National Transportation Safety Board. Removal efforts will minimize damage to the aircraft or wreckage; however, military or other operational factors may be overriding.

(2) An operator making an emergency landing:

(i) Is not charged a landing fee.

(ii) Pays all costs for labor, material, parts, use of equipment and tools, and so forth, to include, but not limited to:

(A) Spreading foam on the runway.

(B) Damage to runway, lighting, and navigation aids.

(C) Rescue, crash, and fire control services.

(D) Movement and storage of aircraft.

(E) Performance of minor maintenance.

(F) Fuel or oil (AFM 67–1, vol 1, part three, chapter 1, Air Force Stock Fund and DPSC Assigned Item Procedures[4]).

(c) *Inadvertent unauthorized landings.* (1) The installation commander or a designated representative may determine a landing to be inadvertent if the aircraft operator:

(i) Landed due to flight disorientation.

(ii) Mistook the Air Force airfield for a civil airport.

(2) Normal landing fees must be charged and an unauthorized landing fee may be assessed to compensate the Government for the added time, effort, and risk involved in the inadvertent landing. Only the unauthorized landing fee may be waived by the installation commander or a designated representative if, after interviewing the pilot-in-command and appropriate Government personnel, it is determined that flying safety was not significantly impaired. The pilot-in-command may appeal the imposition of an unauthorized landing fee for an inadvertent landing to the MAJCOM, FOA, or DRU whose decision will be final. A subsequent inadvertent landing will be processed as an intentional unauthorized landing.

(d) *Intentional unauthorized landings.* (1) The installation commander may categorize an unauthorized landing as intentional when there is unequivocal evidence that the pilot deliberately:

(i) Landed without an approved DD Form 2401 on board the aircraft.

(ii) Landed for a purpose not approved on the DD Form 2401.

(iii) Operated an aircraft not of a model or registration number on the approved DD Form 2401.

[4] See footnote 1 to § 855.6.

(iv) Did not request or obtain the required final approval from the installation commander or a designated representative at least 24 hours before aircraft arrival.

(v) Did not obtain landing clearance from the air traffic control tower.

(vi) Landed with an expired DD Form 2401.

(vii) Obtained landing authorization through fraudulent methods, or

(viii) Landed after having been denied a request to land from any Air Force authority, including the control tower.

(2) Normal landing fees and an unauthorized landing fee must be charged. Intentional unauthorized landings increase reporting, processing, and staffing costs; therefore, the unauthorized landing fee for paragraph (d)(1)(i) through (d)(1)(vi) of this section will be increased by 100 percent. The unauthorized landing fee will be increased 200 percent for paragraph (d)(1)(vii) and (d)(1)(viii) of this section.

(3) Intentional unauthorized landings may be prosecuted as a criminal trespass, especially if a debarment letter has been issued. Repeated intentional unauthorized landings prejudice the user's FAA operating authority and jeopardize future use of Air Force airfields.

§ 855.15 Detaining an aircraft.

(a) An installation commander in the United States, its territories, or its possessions may choose to detain an aircraft for an intentional unauthorized landing until:

(1) The unauthorized landing has been reported to the FAA, HQ USAF/XOOBC, and the appropriate US Attorney.

(2) All applicable charges have been paid.

(b) If the installation commander wishes to release the aircraft before the investigation is completed, he or she must obtain bond, promissory note, or other security for payment of the highest charge that may be assessed.

(c) The pilot and passengers will not be detained longer than is necessary for identification, although they may be permitted to remain in a lounge or other waiting area on the base at their request for such period as the installation commander may determine (normally not to exceed close of business hours at the home office of the entity owning the aircraft, if the operator does not own the aircraft). No person, solely due to an intentional unauthorized landing, will be detained involuntarily after identification is complete without coordination from the appropriate US Attorney, the MAJCOM, FOA, or DRU, and HQ USAF/XOOBC.

§ 855.16 Parking and storage.

The time that an aircraft spends on an installation is at the discretion of the installation commander or a designated representative but should be linked to the purpose of use authorized. Parking and storage may be permitted on a nonexclusive, temporary, or intermittent basis, when compatible with military requirements. At those locations where there are Air Force aero clubs, parking and storage privileges may be permitted in the area designated for aero club use without regard for the purpose of use authorized, if consistent with aero club policies. Any such permission may be revoked upon notice, based on military needs and the installation commander's discretion.

§ 855.17 Fees for landing, parking, and storage.

(a) Landing, parking, and storage fees (Tables 3 and 4 to this part) are determined by aircraft maximum gross takeoff weight (MGTOW). All fees are normally due and collectable at the time of use of the Air Force airfield. DD Form 1131, Cash Collection Voucher, is used to deposit the fees with the base accounting and finance officer. In some instances, it may be necessary to bill the user for charges incurred.

(b) Landing fees are not charged when the aircraft is operating in support of official Government business or for any purpose, the cost of which is subject to reimbursement by the US Government. Parking and Storage Fees (Table 4 to this part) are charged if an aircraft must remain beyond the period necessary to conduct official Government business and for all non-official Government business operations.

§ 855.18 Aviation fuel and oil purchases.

When a user qualifies under the provisions of AFM 67–1, vol. 1, part three, chapter 1, Air Force Stock Fund and DPSC Assigned Item Procedures,[5] purchase of Air Force fuel and oil may be made on a cash or credit basis. An application for credit authority can be filed by submitting an Authorized Credit Letter to SA-ALC/SFRL, 1014 Andrews Road, Building 1621, Kelly AFB TX 78241–5603.

§ 855.19 Supply and service charges.

Supplies and services furnished to a user will be charged for as prescribed in AFM 67–1, volume 1, part one, chapter 10, section N, Basic Air Force Supply Procedures, and AFR 177–102, paragraph 28.24, Commercial Transactions at Base Level.[6] A personal check with appropriate identification, cashier's check, money order, or cash are acceptable means of payment. Charges for handling foreign military sales cargo are prescribed in AFR 170–3, Financial Management and Accounting for Security Assistance and International Programs.[7]

Subpart C—Agreements for Civil Aircraft Use of Air Force Airfields

§ 855.20 Joint-use agreements.

An agreement between the Air Force and a local Government agency is required before a community can establish a public airport on an Air Force airfield.

(a) Joint use of an Air Force airfield will be considered only if there will be no cost to the Air Force and no compromise of mission capability, security, readiness, safety, or quality of life. Further, only proposals submitted by authorized representatives of local Government agencies eligible to sponsor a public airport will be given the comprehensive evaluation required to conclude a joint use agreement. All reviewing levels will consider and evaluate such requests on an individual basis.

(b) Generally, the Air Force is willing to consider joint use at an airfield if it does not have pilot training, nuclear storage, or a primary mission that requires a high level of security. Civil operations must begin within 5 years of the effective date of an agreement. Operational considerations will be based on the premise that military aircraft will receive priority handling (except in emergencies), if traffic must be adjusted or resequenced. The Air Force normally will not consider personnel increases solely to support civil operations but, if accommodated, all costs must be fully reimbursed by the joint-use sponsor. The Air Force will not provide personnel to install, operate, maintain, alter, or relocate navigation equipment or aircraft arresting systems for the sole use of civil aviation. Changes in equipment or systems to support the civil operations must be funded by the joint-use sponsor. The Air Force must approve siting, design, and construction of the civil facilities.

§ 855.21 Procedures for sponsor.

To initiate consideration for joint use of an Air Force airfield, a formal proposal must be submitted to the installation commander by a local Government agency eligible to sponsor a public airport. The proposal must include:

(a) Type of operation.

(b) Type and number of aircraft to be located on or operating at the airfield.

(c) An estimate of the number of annual operations for the first 5 years.

§ 855.22 Air Force procedures.

(a) Upon receipt of a joint-use proposal, the installation commander, without precommitment or comment, will send the documents to the Air Force Representative (AFREP) at the Federal Aviation Administration (FAA) Regional Office within the geographical area where the installation is located. AFI 13–201, Air Force Airspace Management,[8] lists the AFREPs and their addresses. The installation commander must provide an information copy of the proposal to HQ USAF/

[5] See footnote 1 to § 855.6.
[6] See footnote 1 to § 855.6.
[7] See footnote 1 to § 855.6.
[8] See footnote 1 to § 855.6.

XOOBC, 1480 Air Force Pentagon, Washington DC 20330–1480.

(b) The AFREP provides comments to the installation commander on airspace, air traffic control, and other related areas, and informs local FAA personnel of the proposal for joint use.

(c) The installation, the numbered Air Force, and the major command (MAJCOM) will then evaluate the proposal. The MAJCOM will send the comments and recommendations from all reviewing officials to HQ USAF/XOOBC.

(d) Factors considered in evaluating joint use include, but are not limited to:

(1) Impact on current and programmed military activities at the installation.

(2) Compatibility of proposed civil aviation operations with present and planned military operations.

(3) Compatibility of communications systems.

(4) Instrument capability of crew and aircraft.

(5) Runway and taxiway configuration. (Installations with single runways normally will not be considered for joint use.)

(6) Security. The possibility for sabotage, terrorism, and vandalism increases with joint use; therefore, joint use will not be considered:

(i) If military and civil aircraft would be collocated in hangars or on ramps.

(ii) If access to the civil aviation facilities would require routine transit through the base.

(7) Fire, crash, and rescue requirements.

(8) Availability of public airports to accommodate the current and future air transportation needs of the community through construction or expansion.

(9) Availability of land for civil airport complex.

NOTE: The majority of land required for a terminal and other support facilities must be located outside the installation perimeter or at a site that will allow maximum separation of military and civil activities. If the community does not already own the needed land, it must be acquired at no expense to the Air Force. The Air Force may make real property that is not presently needed, but not excess, available by lease under 10 U.S.C 2667. An application for lease of Air Force real property must be processed through the chain of command to the Air Force Real Estate Agency, 172 Luke Avenue, Suite 104, Building 5683, Bolling AFB DC 20332–5113, as prescribed in AFI 32–9003, Granting Temporary Use of Air Force Real Property[9]. All real property outleases require payment of fair market consideration and normally are processed through the Corps of Engineers. The General Services Administration must be contacted regarding availability of excess or surplus Federal real property and an application submitted through FAA for an airport use public benefit transfer under 49 U.S.C. § 47151–47153.

(10) Sponsor's resources to pay a proportionate share of costs for runway operation and maintenance and other jointly used facilities or otherwise provide compensation that is of direct benefit to the Government.

(e) When the Air Force determines that joint use may be compatible with its defense mission, the environmental impact analysis process must be completed before a final decision can be made. The Air Force will act as lead agency for the preparation of the environmental analysis (32 CFR part 989, Environmental Impact Analysis Process). The local Government agency representatives, working in coordination with Air Force personnel at the installation and other concerned local or Federal officials, must identify the proposed action, develop conceptual alternatives, and provide planning, socioeconomic, and environmental information as specified by the appropriate MAJCOM and HQ USAF/CEVP. The information must be complete and accurate in order to serve as a basis for the preparation of the Air Force environmental documents. All costs associated with the environmental studies required to complete the environmental impact analysis process must be paid by the joint use sponsor. Information on environmental analysis requirements is available from HQ USAF/CEVP, 1260 Air Force Pentagon, Washington DC 20330–1260.

(f) HQ USAF/XOOBC can begin negotiating a joint-use agreement after the environmental impact analysis process is completed. The agreement must be concluded on behalf of the Air Force by SAF/MII as the approval authority for use of Air Force real property for periods exceeding 5 years. The joint-use

[9] See footnote 1 to § 855.6.

agreement will state the extent to which the provisions of subpart B of this part, Civil Aircraft Landing Permits, apply to civil aircraft operations.

(1) Joint-use agreements are tailored to accommodate the needs of the community and minimize the impact on the defense mission. Although each agreement is unique, attachment 4 to this part provides basic terms that are frequently included in such agreements.

(2) Agreements for joint use at Air Force airfields on foreign soil are subject to the requirements of AFI 51–701, Negotiating, Concluding, Reporting, and Maintaining International Agreements[10].

(g) HQ USAF/XOOBC and SAF/MII approval is required to amend existing joint use agreements. The evaluation and decision processes followed in concluding an initial joint-use proposal must be used to amend existing joint-use agreements.

§ 855.23 Other agreements.

(a) Temporary use of Air Force runways occasionally is needed for extended periods when a local civil airport is unavailable or to accommodate special events or projects. Such use requires agreement between the Air Force and the local airport authority or other equivalent responsible entity.

(b) The local proponent and Air Force personnel should draft and submit an agreement to the MAJCOM Director for Operations, or equivalent level, for review and comment. The agreement must address all responsibilities for handling aircraft, cargo, and passengers, and hold the Air Force harmless of all liabilities. The agreement will not exceed 3 years. Although each agreement will be unique, attachment 5 of this part provides one example. The draft agreement, with all comments and recommendations, must be sent to HQ USAF/XOOBC for final approval.

TABLE 1 TO PART 855—PURPOSE OF USE/VERIFICATION/APPROVAL AUTHORITY/FEES

Purpose of use	Verification	Approval * authority	Fees
Contractor or subcontractor (A). A US or foreign contractor or subcontractor, operating corporate, personal, or leased aircraft in conjunction with fulfilling the terms of a government contract.	Current Government contract numbers; the Air Force airfields required for each contract; a brief description of the work to be performed; and the name, telephone number, and address of the government contracting officer must be provided on the DD Form 2401 or a continuation sheet.	1	No.
Note: Potential contractors may not land at Air Force airfields to pursue or present an unsolicited proposal for procurement of government business. One time authorization can be provided when an authorized US Government representative verifies that the potential contractor has been specifically invited for a sales presentation or to discuss their product.			
Demonstration (B). Aircraft, aircraft with components installed, or aircraft transporting components or equipment operating to demonstrate or display a product to US Government representatives who have procurement authority or certification responsibilities. (Authority granted under this paragraph does not include aerobatic demonstrations.).	Demonstration or display must be a contractual requirement or presented at the request of an authorized US Government representative. The name, address, and telephone number of the requesting government representative or contracting officer and contract number must be included on the DD Form 2401.	1	No.
Aerial performance (BB). Aircraft performing aerobatics and or fly-bys at Air Force airfields.	Approval of MAJCOM, FOA, or DRU and FAA as specified in AFI 35–201, *Community Relations.*	1	No.

[10] See footnote 1 to § 855.6.

Purpose of use	Verification	Approval * authority	Fees
Active duty US military and other US uniformed service members with military identification cards (includes members of the US Public Health Service, Coast Guard, and National Oceanic and Atmospheric Administration) (C). Service members, operating their own aircraft, leased aircraft, or other available aircraft for official duty travel (temporary duty, permanent change of station, etc.) or for private, non revenue flights.	Social security number in block 1 on DD Form 2401.	1	No.
Reserve Forces (D). Members of the US Reserve Forces (including Reserve Officer Training Corps and National Guard) operating their own aircraft, leased aircraft, or other available aircraft to fulfill their official duty commitment at the installation where their unit is assigned and other installations for temporary duty assignments.	Endorsement from member's commander that validates military status and requirement for use of Air Force airfields listed on the DD Form 2401. The endorsement may be included on the DD Form 2401 or provided separately by letter. When appropriate, travel orders must be on board the aircraft.	1	No.
Dependents of active duty US military personnel, other US uniformed service personnel, (CC), or US Reserve Forces personnel (DD). Dependents operating their own aircraft, leased aircraft, or other available aircraft in conjunction with activities related to entitlements as a dependent of a uniformed service member.	Identification card (DD Form 1173) number or social security number, identification card expiration date, and a letter of endorsement from sponsor.	1	No.
US Government civil service employees (E). Civilian employees of the US Government operating their own aircraft, leased aircraft, or other available aircraft for official Government business travel.	Supervisor's endorsement in block 4 of the DD Form 2401. Individual must have a copy of current travel orders or other official travel certification available for verification if requested by an airfield manager or a designated representative.	1	No.
Retired US military members and other retired US uniformed service members with a military identification card authorizing use of the commissary, base exchange, and or military medical facilities (G). Retired Service members, operating their own aircraft, leased aircraft, or other available aircraft in conjunction with activities related to retirement entitlements authorized by law or regulation.	Copy of retirement orders on file with the approving authority.	1	No.
Dependents of retired US military personnel and other retired US uniformed service personnel (GG). Dependents of retired Service members operating their own aircraft, leased aircraft, or other available aircraft in conjunction with activities related to entitlements authorized by law or regulation as a dependent of a retired Service member.	Identification card (DD Form 1173) number or social security number, identification card expiration date, sponsor's retirement orders, and letter of endorsement from sponsor.	1	No.
Civil Air Patrol (CAP) (H). CAP members operating personal or CAP aircraft for official CAP activities.	Endorsement of the application by HQ CAP-USAF/XOO, 105 South Hansell Street, Maxwell AFB AL 36112–6332.	1	No.
Aero club members (I). Individuals operating their own aircraft at the Air Force airfield where they hold active aero club membership.	Membership validation by the aero club manager on the DD Form 2401.	6	No.
Weather alternate (J). An Air Force airfield identified on a scheduled air carrier's flight plan as an alternate airport as prescribed by Federal Aviation Regulations (FARs) or equivalent foreign Government regulations. The airfield can only be used if weather conditions develop while the aircraft is in flight that preclude landing at the original destination. Aircraft may not be dispatched from the point of departure to an Air Force airfield designated as an approved weather alternate.	List of the destination civil airports for which the alternate will be used and certification of scheduled air carrier status, such as the US Department of Transportation Fitness Certificate.	1	Yes

Purpose of use	Verification	Approval * authority	Fees
Note: Scheduled air carriers are defined at Attachment 1. Only those airfields identified on the list at Attachment 2 are available for use as weather alternates. Airfields cannot be used as alternates for non-scheduled operations. Passengers and cargo may not be offloaded, except with the approval of the installation commander when there is no other reasonable alternative. Boarding new passengers and or loading new cargo is not authorized.			
Air Mobility Command (AMC) contractor charter (K). An air carrier transporting passengers or cargo under the terms of an AMC contract. (Landing permits for this purpose are processed by HQ AMC/DOKA, 402 Scott Drive, Unit 3A1, Scott AFB IL 62225–5302.).	International flights must have an AMC Form 8, Civil Aircraft Certificate, on board the aircraft. Domestic flights must have either a *Certificate of QUICK-TRANS* (Navy), a *Certificate of Courier Service Operations* (AMC), or a *Certificate of Intra-Alaska Operations* (AMC) on board the aircraft.	3	No.
CRAF alternate (KK). An Air Force airfield used as an alternate airport by air carriers that have contracted to provide aircraft for the Civil Reserve Air Fleet (CRAF).	Participant in the CRAF program and authorized by contract.	2	Yes.
US Government contract or charter operator (L). An air carrier transporting passengers or cargo for a US Government department or agency other than US military departments.	The chartering agency and name, address, and telephone number of the Government official procuring the transportation must be listed in block 4 of the DD Form 2401. An official government document, such as an SF 1169, *US government Transportation Request,* must be on board the aircraft to substantiate that the flight is operating for a US Government department or agency.	1	No.
Contractor or subcontractor charter (M). Aircraft chartered by a US or foreign contractor or subcontractor to transport personnel or cargo in support of a current government contract.	The contractor or subcontractor must provide written validation to the decision authority that the charter operator will be operating on their behalf in fulfilling the terms of a government contract, to include current government contract numbers and contract titles or brief description of the work to be performed; the Air Force airfields required for use, and the name, telephone number, and address of the government contracting officer.	1	No.
DOD charter (N). Aircraft transporting passengers or cargo within the United States for the military departments to accommodate transportation requirements that do not exceed 90 days.	Military Air Transportation Agreement (MATA) approved by the Military Transportation Management Command (MTMC) (this includes survey and approval by HQ AMC/DOB, 402 Scott Drive, Suite 132, Scott AFB IL 62225–5363). An SF 1169 or SF 1103, *US Government Bill of Lading,* must be on board the aircraft to validate the operation is for the military departments as specified in AFJI 24–211, *Defense Traffic Management Regulation.* (Passenger charters arranged by the MTMC are assigned a commercial air movement (CAM) or civil air freight movement number each time a trip is awarded. Installations will normally be notified by message at least 24 hours before a pending CAM.)	1	No.
Media (F). Aircraft transporting representatives of the media for the purpose of gathering information about a US Government operation or event. (Except for the White House Press Corps, use will be considered on a case-by-case basis. For example, authorization is warranted if other forms of transportation preclude meeting a production deadline or such use is in the best interest of the US Government. DD Forms 2400 and 2402 should be on file with HQ USAF/XOOBC to ensure prompt telephone approval for validated requests.).	Except for White House Press Corps charters, concurrence of the installation commander, base operations officer, and public affairs officer.	2	Note 1.
Commercial aircraft certification testing required by the FARs that only involves use of normal flight facilities (P).	Application must cite the applicable FAR, describe the test, and include the name and telephone number of the FAA certification officer.	2	Yes.

Purpose of use	Verification	Approval * authority	Fees
Commercial development testing at Air Force flight test facilities (Q) as described in AFI 99–101, *Development Test & Evaluation.*	Statement of Capability Number or Cooperative Research and Development Agreement Number, and name and telephone number of the Air Force official who approved support of the test project.	1	Yes.
Commercial charter operations (R). Aircraft transporting passengers or cargo for hire for other than US military departments. *Note: Federal Aviation Administration (FAA) certification is required for airfields used by carriers certified under FAR, part 121 (passenger aircraft that exceed 30 passenger seats). HQ USAF/XOOBC will request that FAA issue an airport operating certificate under FAR, part 139, as necessary. Exceptions to the requirement for certification are Air Force airfields used for:* *a. Emergencies.* *b. Weather alternates.* *c. Air taxi operations under FAR, part 135. Note: This is currently under review. Anticipate a change that will eliminate the air taxi exemption.* *d. Air carrier operations in support of contract flights exclusively for the US military departments.*	Unavailability of: a. a suitable civil airport, b. aircraft that could operate into the local civil airport, or c. other modes of transportation that would reasonably satisfy the transportation requirement.	5	Yes.
Commercial air crew training flights (S). Aircraft operated by commercial air carrier crews for the purpose of maintaining required proficiency.	Memorandum of Understanding approved by HQ USAF/XOOBC that establishes conditions and responsibilities in conducting the training flights.	2	Yes.
Private, non revenue producing flights (T). Aircraft operating for a variety of reasons, such as transporting individuals to meet with Government representatives or participate in Government sponsored ceremonies and similar events. At specified locations, the purpose of use may be to gain access to collocated private sector facilities as authorized by lease, agreement, or contract.	The verification will vary with the purpose for use. For example, when use is requested in conjunction with events such as meetings or ceremonies, the applicant must provide the name and telephone number of the Government project officer.	4	Note 2.
Provisional airfield (U). An Air Force airfield used by civil aircraft when the local civil airport is temporarily unavailable, or by a commercial air carrier operating at a specific remote location to provide commercial air transportation for local military members under the provisions of a lease or other legal instrument.	Memorandum of Understanding, Letter of Agreement, or lease that establishes responsibilities and conditions for use.	2	Yes.
Foreign government charter (V). Aircraft chartered by a foreign government to transport passengers or cargo.	Application must include name and telephone number of the foreign government representative responsible for handling the charter arrangements.	2	Note 3.
Flights transporting foreign military sales (FMS) material (W). (Hazardous, oversized, or classified cargo only.)	FMS case number, requisition numbers, delivery term code and information as specified below: a. Description of cargo (nomenclature and or proper shipping name). The description of hazardous cargo must include the Department of Transportation exemption number, hazard class, number of pieces, and net explosive weight. b. Name, address, and telephone number of individual at Air Force base that is coordinating cargo handling and or other required terminal services.	2	Note 3.

Purpose of use	Verification	Approval * authority	Fees
	c. Cargo to be loaded or off loaded must be equipped with sufficient cargo pallets and or tiedown materials to facilitate handling. Compatible 463L pallets and nets will be exchanged on a one-for-one basis for serviceable units. Nonstandard pallets and nets cannot be exchanged; however, they will be used to buildup cargo loads after arrival of the aircraft. Aircraft arriving without sufficient cargo loading and tiedown devices must be floor loaded and the aircraft crew will be responsible for purchasing the necessary ropes, chains, and so forth. d. US Government FMS case management agency to which costs for services rendered are chargeable. e. Name, address, and telephone number of freight forwarder. f. Name, address, and telephone number of shipper.		
Certified flight record attempts (X). Aircraft operating to establish a new aviation record.	Documentation that will validate National Aeronautic Association or Federation Aeronautique Internationale sanction of the record attempt.	2	Yes.
Political candidates (Y). (For security reasons only) Aircraft either owned or chartered explicitly for a Presidential or Vice Presidential candidate, including not more than one accompanying overflow aircraft for the candidate's staff and press corps. Candidate must be a Presidential or Vice Presidential candidate who is being furnished protection by the US Secret Service. Aircraft clearance is predicated on the Presidential or Vice Presidential candidate being aboard one of the aircraft (either on arrival or departure). Normal landing fees will be charged. To avoid conflict with US statutes and Air Force operational requirements, and to accommodate expeditious handling of aircraft and passengers, the installation commander will: a. Provide minimum official welcoming party. b. Not provide special facilities. c. Not permit political rallies or speeches on the installation. d. Not provide official transportation to unauthorized personnel, such as the press or local populace.	The Secret Service must confirm that use has been requested in support of its security responsibilities.	2	Yes.
Aircraft either owned or personally chartered for transportation of the President, Vice President, a past President of the United States, the head of any US Federal department or agency, or a member of the Congress (Z).	Use by other than the President or Vice President must be for official government business. All requests will be coordinated with the Office of Legislative Liaison (SAF/LL) as prescribed in AFI 90–401, *Air Force Relations with Congress*.	2	No.

* Approving Authority:
1=Can be approved at all levels.
2=HQ USAF/XOOBC.
3=HQ AMC/DOKA.
4=Except as specifically delegated in paragraphs 2.4.2 and 2.4.2.3, must be approved by HQ USAF/XOOBC.
5=Except as specifically delegated in paragraph 2.4.2.1, must be approved by HQ USAF/XOOBC.
6=Policy concerning private aircraft use of aero club facilities varies from base to base, primarily due to space limitations and military mission requirements. Therefore, applications for use of aero club facilities must be processed at base level.

Note 1: Landing fees *are charged* for White House Press Corps flights. Landing fees are not charged if the Air Force has invited media coverage of specific events.

Note 2: Landing fees *are charged if* flight is *not* operating in support of *official Government business*.

Note 3: Landing fees *are charged* unless US Government charters have reciprocal privileges in the foreign country.

Table 2 to Part 855—Aircraft Liability Coverage Requirements

Aircraft maximum gross takeoff weight (MGTOW)	Coverage for	Bodily injury	Property damage	Passenger
12,500 Pounds and Under	Each Person	$100,000		$100,000.
	Each Accident	300,000	100,000	100,000 multiplied by the number of passenger seats.
More than 12,500 Pounds	Each Person	100,000		100,000.

Aircraft maximum gross takeoff weight (MGTOW)	Coverage for	Bodily injury	Property damage	Passenger
	Each Accident	1,000,000	1,000,000	100,000 multiplied by 75% multiplied by the number of passenger seats.

TABLE 3 TO PART 855—LANDING FEES

Aircraft Maximum Gross Takeoff Weight (MGTOW)	Normal fee	Unauthorized fee	Intentional fee	Minimum fee	United States, Territories, and Possessions	Overseas
	$1.50 per 1,000 lbs MGTOW or fraction thereof.	.....	.....	$20.00	X	
	$1.70 per 1,000 lbs MGTOW or fraction thereof.	.....	.....	25.00		X
Up to and including 12,500 lbs.	.....	$100.00	.....	.....	X	X
12,501 to 40,000 lbs	.....	300.00	.....	.....	X	X
Over 40,000 lbs	.....	600.00	.....	.....	X	X
	.....	.....	Increase unauthorized fee by 100% or 200%.	.....	X	X

TABLE 4 TO PART 855—PARKING AND STORAGE FEES

Fee per aircraft for each 24-hour period or less	Minimum fee	Charge begins	Ramp	Hangar
$1.00 per 100,000 lbs MGTOW or fraction thereof	$20.00	6 hours after landing	X	
$2.00 per 100,000 lbs MGTOW or fraction thereof	20.00	Immediately		X

ATTACHMENT 1 TO PART 855—GLOSSARY OF REFERENCES, ABBREVIATIONS, ACRONYMS, AND TERMS

Section A—References

AFPD 10–10, Civil Aircraft Use of United States Air Force Airfields
AFI 10–1001, Civil Aircraft Landing Permits
AFI 13–201, Air Force Airspace Management
AFI 32–7061(32 CFR part 989), Environmental Impact Analysis Process
AFI 32–9003, Granting Temporary Use of Air Force Real Property
AFI 34–117, Air Force Aero Club Program
AFI 35–201, Community Relations
AFI 51–701, Negotiating, Concluding, Reporting, and Maintaining International Agreements
AFI 84–103, Museum System
AFI 90–401, Air Force Relations with Congress
AFI 99–101, Development Test and Evaluation
AFJI 24–211, Defense Traffic Management Regulation
AFM
67–1, vol 1, part 1, Basic Air Force Supply Procedures
AFM 67–1, vol 1, part 3, Air Force Stock Fund and DPSC Assigned Item Procedures
AFMAN 3–132, Air Force Aero Club Operations
AFR 170–3, Financial Management and Accounting for Security Assistance and International Programs
AFR 177–102, Commercial Transactions at Base Level
FAR, part 121, Certification and Operation: Domestic, Flag, and Supplemental Air Carriers and Commercial Operations of Large Aircraft
FAR, part 135, Air Taxi Operators and Commercial Operators of Small Aircraft
FAR, part 139, Certification and Operations: Land Airports Serving Certain Air Carriers

Section B—Abbreviations and Acronyms

Abbreviations and acronyms	Definitions
AFI	Air Force Instruction.
AFJI	Air Force Joint Instruction.
AFM	Air Force Manual.
AFMAN	Air Force Manual.
AFPD	Air Force Policy Directive.
AFR	Air Force Regulation.
AFREP	Air Force Representative.
AMC	Air Mobility Command.
AOG	Air Operations Group.
CAM	Commercial Air Movement.
CAP	Civil Air Patrol.
CRAF	Civil Reserve Air Fleet.
DPSC	Defense Personnel Support Center.

Abbreviations and acronyms	Definitions
DRU	Direct Reporting Unit.
FAA	Federal Aviation Administration.
FAR	Federal Aviation Regulation.
FMS	Foreign Military Sales.
FOA	Field Operating Agency.
FSDO	Flight Standards District Office.
HQ AMC/DOKA	Headquarters Air Mobility Command, Contract Airlift, Directorate of Operations and Transportation.
HQ USAF/CEVP	Headquarters United States Air Force, Environmental Planning Division, Directorate of Environment.
HQ USAF/XOOBC	Headquarters United States Air Force, Civil Aviation, Bases and Units Division, Directorate of Operations.
HQ USAF/XOOO	Headquarters United States Air Force, Operations Group, Directorate of Operations.
MAJCOM	Major Command.
MATA	Military Air Transportation Agreement.
MGTOW	Maximum Gross Takeoff Weight.
MTMC	Military Traffic Management Command.
SAF/LL	Secretary of the Air Force, Office of Legislative Liaison.
SAF/MII	Secretary of the Air Force, Deputy Assistant Secretary of the Air Force (Installations).
SAF/PAC	Secretary of the Air Force, Office of Public Affairs, Directorate for Community Relations.
US	United States.
USDAO	United States Defense Attache Office.

Section C—Terms

Aircraft. Any contrivance now known or hereafter invented, used, or designated for navigation of or flight in navigable airspace as defined in the Federal Aviation Act.

Airfield. An area prepared for the accommodation (including any buildings, installations, and equipment), landing, and take-off of aircraft.

Authorized Credit Letter. A letter of agreement that qualified operators must file with the Air Force to purchase Air Force aviation fuel and oil on a credit basis under the provisions of AFM 67–1, vol 1, part three, chapter 1, Air Force Stock Fund and DPSC Assigned Item Procedures.

Civil Aircraft. Any United States or foreign-registered aircraft owned by non-Governmental entities, and foreign Government-owned aircraft that are operated for commercial purposes.

Civil Aviation. All civil aircraft of any national registry, including:

Commercial Aviation. Civil aircraft that transport passengers or cargo for hire.

General Aviation. Civil aircraft that do not transport passengers or cargo for hire.

Civil Reserve Air Fleet (CRAF). US registered aircraft, certificated under FAR part 121, obligated by contract to provide aircraft and crews to the Department of Defense during contingencies or war.

DD Form 2400, Civil Aircraft Certificate of Insurance. A certificate that shows the amount of third-party liability insurance carried by the user and assures the United States Government of advance notice if changes in coverage occur.

DD Form 2401, Civil Aircraft Landing Permit. A license which, when validated by an Air Force approving authority, authorizes the civil aircraft owner or operator to use Air Force airfields.

DD Form 2402, Civil Aircraft Hold Harmless Agreement. An agreement, completed by the user, which releases the United States Government from all liabilities incurred in connection with civil aircraft use of Air Force airfields.

Government Aircraft. Aircraft owned, operated, or controlled for exclusive, long-term use by any department or agency of either the United States or a foreign Government; and aircraft owned by any United States State, County, Municipality or other political subdivision; or any aircraft for which a Government has the liability responsibility. In the context of this instruction, it includes foreign registered aircraft, which are normally commercially operated, that have been wholly chartered for use by foreign Government heads of State for official State visits.

Government Furnished or Bailed Aircraft. US Government-owned aircraft provided to a Government contractor for use in conjunction with a specific contractual requirement.

Installation Commander. The individual with ultimate responsibility for operating the airfield and for base operations (normally a wing or group commander), as determined by the MAJCOM.

Joint-Use Agreement. An agreement between the Air Force and a local Government agency that establishes a public airport on an Air Force airfield.

Loaned Aircraft. US Government-owned aircraft made available for use by another US Government agency. This does not include aircraft leased or loaned to non-Governmental entities. Such aircraft will be considered as civil aircraft for purposes of this instruction.

Military Aircraft. Aircraft used exclusively in the military services of the US or a foreign Government and bearing appropriate military and national markings or carrying appropriate identification.

Official Government Business. Activities that support or serve the needs of US Federal agencies located at or in the immediate vicinity of an Air Force installation, including nonappropriated fund entities. For elected or appointed Federal, State, and local officeholders, official business is activity performed in fulfilling duties as a public official.

Other Agreement. An agreement between the Air Force and a local Government agency for temporary use of an Air Force runway

when a local civil airport is unavailable, or to accommodate a special event or project.

Scheduled Air Carrier. An air carrier that holds a scheduled air carrier certificate and provides scheduled service year round between two or more points.

Unauthorized Landing. A landing at an Air Force airfield by a civil aircraft without prior authority (approved DD Form 2401 and 24 hours prior notice).

User. The person, corporation, or other responsible entity operating civil aircraft at Air Force airfields.

ATTACHMENT 2 TO PART 855—WEATHER ALTERNATE LIST

ALTUS AFB OK
ANDERSEN AFB GUAM
CANNON AFB NM
DOBBINS AFB GA
DYESS AFB TX
EARECKSON AFS AK*
EGLIN AFB FL
EIELSON AFB AK
ELLSWORTH AFB SD
ELMENDORF AFB AK
FAIRCHILD AFB WA
GRAND FORKS AFB ND
HILL AFB UT
HOWARD AFB PA
KADENA AB OKINAWA
KELLY AFB TX
KUNSAN AB KOREA
LANGLEY AFB VA
LAUGHLIN AFB TX
MALMSTROM AFB MT
McCHORD AFB WA
McCONNELL AFB KS
MINOT AFB ND
MT HOME AFB ID
NELLIS AFB NV
OFFUTT AFB NE
OSAN AB KOREA
PLANT 42, PALMDALE CA
TRAVIS AFB CA
TYNDALL AFB FL
YOKOTA AB JAPAN

ATTACHMENT 3 TO PART 855—LANDING PERMIT APPLICATION INSTRUCTIONS

A3.1. DD Form 2400, Civil Aircraft Certificate of Insurance: The insurance company or its authorized agent must complete and sign the DD Form 2400. Corrections to the form made using a different typewriter, pen, or whiteout must be initialed by the signatory. THE FORM CANNOT BE COMPLETED BY THE AIRCRAFT OWNER OR OPERATOR. Upon expiration, the DD Form 2400 must be resubmitted along with DD Form 2401 for continued use of Air Force airfields. The DD Form 2400 may be submitted to the decision authority by either the user or insurer. (Approved by the Office of Management and Budget under control number 0701–0050)

A3.1.1. Block 1, Date Issued. The date the DD Form 2400 is completed by the signatory.

A3.1.2. Block 2a and 2b, Insurer Name, Address. The name and address of the insurance company.

A3.1.3. Block 3a and 3b. Insured Name, Address. The name and address of the aircraft owner and or operator. (The name of the user must be the same on all the forms.)

A3.1.4. Block 4a, Policy Number(s). The policy number must be provided. Binder numbers or other assigned numbers will not be accepted in lieu of the policy number.

A3.1.5. Block 4b, Effective Date. The first day of current insurance coverage.

A3.1.6. Block 4c, Expiration Date. The last day of current insurance coverage. The DD Form 2400 is valid until one day before the insurance expiration date. A DD Form 2400 with the statement "until canceled," in lieu of a specific expiration date, is valid for two years from the issue date.

A3.1.7. Block 5, Aircraft Liability Coverage. The amount of split limit coverage. All boxes in block 5 must be completed to specify the coverage for: each person (top line, left to right) outside the aircraft (bodily injury) and each passenger; and the total coverage per accident (second line, left to right) for: persons outside the aircraft (bodily injury), property damage, and passengers. IF BLOCK 5 IS USED, BLOCK 6 SHOULD NOT BE USED. All coverages must be stated in US dollars. ALL SEATS THAT CAN BE USED FOR PASSENGERS MUST BE INSURED. See Table 2 for required minimum coverage.

A3.1.8. Block 6, Single Limit. The maximum amount of coverage per accident. IF BLOCK 6 IS USED, BLOCK 5 SHOULD NOT BE USED. The minimum coverage required for a combined single limit is determined by adding the minimums specified in the "each accident" line of Table 2. All coverages must be stated in US dollars. ALL SEATS THAT CAN BE USED FOR PASSENGERS MUST BE INSURED.

A3.1.9. Block 7, Excess Liability. The amount of coverage which exceeds primary coverage. All coverages must be stated in US dollars.

A3.1.10. Block 8, Provisions of Amendments or Endorsements of Listed Policy(ies). Any modification of this block by the insurer or insured invalidates the DD Form 2400.

A3.1.11. Block 9a, Typed Name of Insurer's Authorized Representative. Individual must be an employee of the insurance company, an agent of the insurance company, or an employee of an insurance broker.

A3.1.12. Block 9b, Signature. The form must be signed in blue ink so that hand scribed, original signatures are easy to identify. Signature stamps or any type of facsimile signature cannot be accepted.

* Formerly Shemya AFB.

A3.1.13. Block 9c, Title. Self-explanatory.

A3.1.14. Block 9d, Telephone Number. Self-explanatory.

A3.1.15. THE REVERSE OF THE FORM MAY BE USED IF ADDITIONAL SPACE IS REQUIRED.

A3.2. DD Form 2401, Civil Aircraft Landing Permit. A separate DD Form 2401 must be submitted for each purpose of use (Table 1). (Approved by the Office of Management and Budget under control number 0701–0050)

A3.2.1. Block 1a. The name of the owner or operator. (The name of the user must be the same on all the forms.)

A3.2.2. Block 1b. This block should only be completed if the applicant is a subsidiary, division, etc, of another company.

A3.2.3. Block 1c. Business or home address, whichever is applicable, of applicant.

A3.2.4. Block 2. List the airfields where the aircraft will be operating. The statement "Any US Air Force Installation Worldwide" is acceptable for users performing AMC and White House Press Corps charters. "All Air Force airfields in the CONUS" is acceptable, if warranted by official Government business, for all users.

A3.2.5. Block 3. Self-explanatory. (Users will not necessarily be denied landing rights if pilots are not instrument rated and current.)

A3.2.6. Block 4. Provide a brief explanation of purpose for use. The purposes normally associated with use of Air Force airfields are listed in Table 1. If use for other purposes is requested, it may be approved if warranted by unique circumstances. (The verification specified for each purpose of use must be included with the application.)

A3.2.7. Block 5. EXCEPT AS NOTED FOR BLOCK 5C, ALL ITEMS MUST BE COMPLETED.

A3.2.8. Block 5a and Block 5b. Self-explanatory.

A3.2.9. Block 5c. If the DD Form 2400, Certificate of Insurance, indicates coverage for "any aircraft of the listed model owned and or operated," the same statement can be used in block 5c in lieu of specific registration numbers.

A3.2.10. Block 5d. The capacity provided must reflect only the number of crew required to operate the aircraft. The remaining seats are considered passenger seats.

A3.2.11. Block 5e. Self-explanatory.

A3.2.12. Block 5d. A two-way radio is required. Landing rights will not necessarily be denied for lack of strobe lights, a transponder, or IFR capabilities.

A3.2.13. Block 6a. Self-explanatory.

A3.2.14. Block 6b. If the applicant is an individual, this block should not be completed.

A3.2.15. Block 6c. This block should contain a daytime telephone number.

A3.2.16. Block 6d. The form must be signed in blue ink so that hand scribed, original signatures are easy to identify. Signature stamps or any type of facsimile signature cannot be accepted.

A3.2.17. Block 6e. Self-explanatory.

A3.2.18. THE REVERSE OF THE FORM MAY BE USED IF ADDITIONAL SPACE IS REQUIRED.

BLOCKS 7A THROUGH 14C ARE NOT COMPLETED BY THE APPLICANT.

A3.2.19. Blocks 7a and 7b. The expiration date of a permit is determined by the insurance expiration date or the purpose of use. For example, the dates of an air show will determine the expiration date of a permit approved for participation in the air show. If the insurance expiration is used to determine the permit expiration date, the landing permit will expire one day before the insurance expiration date shown on the DD Form 2400, or 2 years from the date the permit is issued when the insurance expiration date either exceeds 2 years or is indefinite (for example, "until canceled").

A3.2.20. APPROVED PERMITS CANNOT BE CHANGED WITHOUT THE CONSENT OF THE APPROVING AUTHORITY.

A3.2.21. DD FORMS 2400 AND 2401 MUST BE RESUBMITTED TO RENEW A LANDING PERMIT. (Corporations must resubmit the DD Form 2402 every five years.)

A3.3. DD Form 2402, Civil Aircraft Hold Harmless Agreement. A form submitted and accepted by an approving authority for an individual remains valid and need not be resubmitted to the same approving authority, unless canceled for cause. Forms submitted by companies, organizations, associations, etc, must be resubmitted at least every five years. (Approved by the Office of Management and Budget under control number 0701–0050)

A3.3.1. Block 2a(1). This block should contain the user's name if the applicant is a company. If the hold harmless agreement is intended to cover other entities of a parent company, their names must also be included in this block.

A3.3.2. Block 2a(2). This block should contain the user's address if the applicant is a company.

A3.3.3. Block 2b(1). This block should contain the name of the individual applying for a landing permit or the name of a corporate officer that is authorized to legally bind the corporation from litigation against the Air Force.

A3.3.4. Block 2b(2). This block should contain the address of the individual applying for a landing permit. A company address is only required if it is different from the address in block 2a(2).

A3.3.5. Block 2b(3). The form must be signed in blue ink so that hand scribed, original signatures are easy to identify. Signature stamps or any type of facsimile signature cannot be accepted.

A3.3.6. Block 2b(4). This block should only be completed when the applicant is a company, organization, association, etc.

A3.3.7. Block 3a(1). If the applicant is a company, organization, association, etc, the form must be completed and signed by the corporate secretary or a second corporate officer (other than the officer executing DD Form 2402) to certify the signature of the first officer. As necessary, the US Air Force also may require that the form be authenticated by an appropriately designated third official.

A3.3.8. Block 3a(2). The form must be signed in blue ink so that hand scribed, original signatures are easy to identify. Signature stamps or any type of facsimile signature cannot be accepted.

A3.3.9. Block 3a(3). Self-explanatory.

A3.3.10. Block 4. Self-explanatory.

ATTACHMENT 4 TO PART 855—SAMPLE JOINT-USE AGREEMENT

Joint-Use Agreement Between an Airport Sponsor and the United States Air Force

This Joint Use Agreement is made and entered into this _____ day of _____ 19____, by and between the Secretary of the Air Force, for and on behalf of the United States of America ("Air Force") and an airport sponsor ("Sponsor") a public body eligible to sponsor a public airport.

WHEREAS, the Air Force owns and operates the runways and associated flight facilities (collectively "flying facilities") located at Warbucks Air Force Base, USA ("WAFB"); and

WHEREAS, Sponsor desires to use the flying facilities at WAFB to permit operations by general aviation aircraft and commercial air carriers (scheduled and nonscheduled) jointly with military aircraft; and

WHEREAS, the Air Force considers that this Agreement will be in the public interest, and is agreeable to joint use of the flying facilities at WAFB; and

WHEREAS, this Agreement neither addresses nor commits any Air Force real property or other facilities that may be required for exclusive use by Sponsor to support either present or future civil aviation operations and activities in connection with joint use; and

WHEREAS, the real property and other facilities needed to support civil aviation operations are either already available to or will be diligently pursued by Sponsor;

NOW, THEREFORE, it is agreed:

1. Joint Use

a. The Air Force hereby authorizes Sponsor to permit aircraft equipped with two-way radios capable of communicating with the WAFB Control Tower to use the flying facilities at WAFB, subject to the terms and conditions set forth in this Agreement and those Federal Aviation Regulations (FAR) applicable to civil aircraft operations. Civil aircraft operations are limited to 20,000 per calendar year. An operation is a landing or a takeoff. Civil aircraft using the flying facilities of WAFB on official Government business as provided in Air Force Instruction (AFI) 10–1001, Civil Aircraft Landing Permits, are not subject to this Agreement.

b. Aircraft using the flying facilities of WAFB under the authority granted to Sponsor by this Agreement shall be entitled to use those for landings, takeoffs, and movement of aircraft and will normally park only in the area made available to Sponsor and designated by them for that purpose.

c. Government aircraft taking off and landing at WAFB will have priority over all civil aircraft at all times.

d. All ground and air movements of civil aircraft using the flying facilities of WAFB under this Agreement, and movements of all other vehicles across Air Force taxiways, will be controlled by the WAFB Control Tower. Civil aircraft activity will coincide with the WAFB Control Tower hours of operation. Any additional hours of the WAFB Control Tower or other essential airfield management, or operational requirements beyond those needed by the Air Force, shall be arranged and funded (or reimbursed) by Sponsor. These charges, if any, shall be in addition to the annual charge in paragraph 2 and payable not less frequently than quarterly.

e. No civil aircraft may use the flying facilities for training.

f. Air Force-owned airfield pavements made available for use under this Agreement shall be for use on an "as is, where is" basis. The Air Force will be responsible for snow removal only as required for Government mission accomplishment.

g. Dust or any other erosion or nuisance that is created by, or arises out of, activities or operations by civil aircraft authorized use of the flying facilities under this Agreement will be corrected by Sponsor at no expense to the Air Force, using standard engineering methods and procedures.

h. All phases of planning and construction of new runways and primary taxiways on Sponsor property must be coordinated with the WAFB Base Civil Engineer. Those intended to be jointly used by Air Force aircraft will be designed to support the type of military aircraft assigned to or commonly transient through WAFB.

i. Coordination with the WAFB Base Civil Engineer is required for planning and construction of new structures or exterior alteration of existing structures that are owned or leased by Sponsor.

j. Sponsor shall comply with the procedural and substantive requirements established by the Air Force, and Federal, State,

interstate, and local laws, for the flying facilities of WAFB and any runway and flight facilities on Sponsor property with respect to the control of air and water pollution; noise; hazardous and solid waste management and disposal; and hazardous materials management.

k. Sponsor shall implement civil aircraft noise mitigation plans and controls at no expense to and as directed by the Air Force, pursuant to the requirements of the WAFB Air Installation Compatible Use Zone (AICUZ) study; the FAA part 150 study; and environmental impact statements and environmental assessments, including supplements, applicable to aircraft operations at WAFB.

l. Sponsor shall comply, at no expense to the Air Force, with all applicable FAA security measures and procedures as described in the Airport Security Program for WAFB.

m. Sponsor shall not post any notices or erect any billboards or signs, nor authorize the posting of any notices or the erection of any billboards or signs at the airfield of any nature whatsoever, other than identification signs attached to buildings, without prior written approval from the WAFB Base Civil Engineer.

n. Sponsor shall neither transfer nor assign this Agreement without the prior written consent of the Air Force.

2. Payment

a. For the purpose of reimbursing the Air Force for Sponsor's share of the cost of maintaining and operating the flying facilities of WAFB as provided in this Agreement, Sponsor shall pay, with respect to civil aircraft authorized to use those facilities under this Agreement, the sum of (specify sum) annually. Payment shall be made quarterly, in equal installments.

b. All payments due pursuant to this Agreement shall be payable to the order of the Treasurer of the United States of America, and shall be made to the Accounting and Finance Officer, WAFB, within thirty (30) days after each quarter. Quarters are deemed to end on December 31, March 31, June 30, and September 30. Payment shall be made promptly when due, without any deduction or setoff. Interest at the rate prescribed by the Secretary of the Treasury of the United States shall be due and payable on any payment required to be made under this Agreement that is not paid within ten (10) days after the date on which such payment is due and end on the day payment is received by the Air Force.

3. Services

Sponsor shall be responsible for providing services, maintenance, and emergency repairs for civil aircraft authorized to use the flying facilities of WAFB under this Agreement at no cost to the Air Force. If Air Force assistance is required to repair an aircraft, Sponsor shall reimburse the Air Force for all expenses of such services. Any required reimbursement shall be paid not less frequently than quarterly. These charges are in addition to the annual charge specified in paragraph 2.

4. Fire Protection and Crash Rescue

a. The Air Force maintains the level of fire fighting, crash, and rescue capability required to support the military mission at WAFB. The Air Force agrees to respond to fire, crash, and rescue emergencies involving civil aircraft outside the hangars or other structures within the limits of its existing capabilities, equipment, and available personnel, only at the request of Sponsor, and subject to subparagraphs b, c, and d below. Air Force fire fighting, crash, and rescue equipment and personnel shall not be routinely located in the airfield movement area during nonemergency landings by civil aircraft.

b. Sponsor shall be responsible for installing, operating, and maintaining, at no cost to the Air Force, the equipment and safety devices required for all aspects of handling and support for aircraft on the ground as specified in the FARs and National Fire Protection Association procedures and standards.

c. Sponsor agrees to release, acquit, and forever discharge the Air Force, its officers, agents, and employees from all liability arising out of or connected with the use of or failure to supply in individual cases, Air Force fire fighting and or crash and rescue equipment or personnel for fire control and crash and rescue activities pursuant to this Agreement. Sponsor further agrees to indemnify, defend, and hold harmless the Air Force, its officers, agents, and employees against any and all claims, of whatever description, arising out of or connected with such use of, or failure to supply Air Force fire fighting and or crash and rescue equipment or personnel.

d. Sponsor will reimburse the Air Force for expenses incurred by the Air Force for fire fighting and or crash and rescue materials expended in connection with providing such service to civil aircraft. The Air Force may, at its option, with concurrence of the National Transportation Safety Board, remove crashed civil aircraft from Air Force-owned pavements or property and shall follow existing Air Force directives and or instructions in recovering the cost of such removal.

e. Failure to comply with the above conditions upon reasonable notice to cure or termination of this Agreement under the provisions of paragraph 7 may result in termination of fire protection and crash and rescue response by the Air Force.

f. The Air Force commitment to assist Sponsor with fire protection shall continue only so long as a fire fighting and crash and rescue organization is authorized for military operations at WAFB. The Air Force shall have no obligation to maintain or provide a fire fighting, and crash and rescue organization or fire fighting and crash and rescue equipment; or to provide any increase in fire fighting and crash and rescue equipment or personnel; or to conduct training or inspections for purposes of assisting Sponsor with fire protection.

5. Liability and Insurance

a. Sponsor will assume all risk of loss and or damage to property or injury to or death of persons by reason of civil aviation use of the flying facilities of WAFB under this Agreement, including, but not limited to, risks connected with the provision of services or goods by the Air Force to Sponsor or to any user under this Agreement. Sponsor further agrees to indemnify and hold harmless the Air Force against, and to defend at Sponsor expense, all claims for loss, damage, injury, or death sustained by any individual or corporation or other entity and arising out of the use of the flying facilities of WAFB and or the provision of services or goods by the Air Force to Sponsor or to any user, whether the claims be based in whole, or in part, on the negligence or fault of the Air Force or its contractors or any of their officers, agents, and employees, or based on any concept of strict or absolute liability, or otherwise.

b. Sponsor will carry a policy of liability and indemnity insurance satisfactory to the Air Force, naming the United States of America as an additional insured party, to protect the Government against any of the aforesaid losses and or liability, in the sum of not less than (specify sum) bodily injury and property damage combined for any one accident. Sponsor shall provide the Air Force with a certificate of insurance evidencing such coverage. A new certificate must be provided on the occasion of policy renewal or change in coverage. All policies shall provide that: (1) No cancellation, reduction in amount, or material change in coverage thereof shall be effective until at least thirty (30) days after receipt of notice of such cancellation, reduction, or change by the installation commander at WAFB, (2) any losses shall be payable notwithstanding any act or failure to act or negligence of Sponsor or the Air Force or any other person, and (3) the insurer shall have no right of subrogation against the United States.

6. Term of Agreement

This Agreement shall become effective immediately and shall remain in force and effect for a term of 25 years, unless otherwise renegotiated or terminated under the provisions of paragraph 7, but in no event shall the Agreement survive the termination or expiration of Sponsor's right to use, by license, lease, or transfer of ownership, of the land areas used in connection with joint use of the flying facilities of WAFB.

7. Renegotiation and Termination

a. If significant change in circumstances or conditions relevant to this Agreement should occur, the Air Force and Sponsor may enter into negotiations to revise the provisions of this Agreement, including financial and insurance provisions, upon sixty (60) days written notice to the other party. Any such revision or modification of this Agreement shall require the written mutual agreement and signatures of both parties. Unless such agreement is reached, the existing agreement shall continue in full force and effect, subject to termination or suspension under this section.

b. Notwithstanding any other provision of this Agreement, the Air Force may terminate this Agreement: (1) At any time by the Secretary of the Air Force, giving ninety (90) days written notice to Sponsor, provided that the Secretary of the Air Force determines, in writing, that paramount military necessity requires that joint use be terminated, or (2) at any time during any national emergency, present or future, declared by the President or the Congress of the United States, or (3) in the event that Sponsor ceases operation of the civil activities at WAFB for a period of one (1) year, or (4) in the event Sponsor violates any of the terms and conditions of this Agreement and continues and persists therein for thirty (30) days after written notification to cure such violation. In addition to the above rights, the Air Force may at any time suspend this agreement if violations of its terms and conditions by Sponsor create a significant danger to safety, public health, or the environment at WAFB.

c. The failure of either the Air Force or Sponsor to insist, in any one or more instances, upon the strict performance of any of the terms, conditions, or provisions of this Agreement shall not be construed as a waiver or relinquishment of the right to the future performance of any such terms, conditions, or provisions. No provision of this Agreement shall be deemed to have been waived by either party unless such waiver be in writing signed by such party.

8. Notices

a. No notice, order, direction, determination, requirement, consent, or approval under this Agreement shall be of any effect unless it is in writing and addressed as provided herein.

b. Written communication to Sponsor shall be delivered or mailed to Sponsor addressed: The Sponsor, 9000 Airport Blvd, USA.

c. Written communication to the Air Force shall be delivered or mailed to the Air Force addressed: Commander, WAFB, USA.

9. Other Agreements not Affected

This Agreement does not affect the WAFB-Sponsor Fire Mutual Aid Agreement.

IN WITNESS WHEREOF, the respective duly authorized representatives of the parties hereto have executed this Agreement on the date set forth below opposite their respective signatures.

UNITED STATES AIR FORCE

Date: _____

By: _____

Deputy Assistant Secretary of the Air Force (Installations)

Date: _____

By: _____

Sponsor Representative

ATTACHMENT 5 TO PART 855—SAMPLE TEMPORARY AGREEMENT

Letter of Agreement for Temporary Civil Aircraft Operations at Warbucks AFB, USA

This letter of agreement establishes policies, responsibilities, and procedures for commercial air carrier operations at Warbucks AFB, USA, (WAFB) for the period (date) through (date) Military requirements will take precedence over civil aircraft operations. Should a conflict arise between air carrier and Air Force operational procedures, Air Force procedures will apply.

Authorized Users

The following air carriers are authorized use, provided they have a civil aircraft landing permit approved at HQ USAF/XOOBC for such use:

Flyaway Airlines
Recreation Airlines
Economy Airlines
PacAir Transport

Schedules

The Bunker International Airport (BIA) manager or air carrier station managers will ensure that the WAFB Airfield Manager is provided current airline schedules during the approved period of use. Every effort will be made to avoid disruption of the air carriers' schedules; however, it is understood that the installation commander will suspend or change flight plans when required to preclude interference with military activities or operations.

Passenger and Luggage Handling

The BIA terminal will be used for passenger loading and unloading. Security checks will be performed at the terminal before loading passengers on buses. Luggage on arriving aircraft will be directly offloaded onto vehicles and delivered to the BIA terminal. Each arriving and departing bus or vehicle caravan will be accompanied by a credentialed representative of the airline or BIA to ensure its integrity enroute. Buses or vehicles transporting passengers to board an aircraft will not depart WAFB until the passengers are airborne. Unless an emergency exists, arriving passengers will not deplane until the buses are available for transportation to the BIA terminal. All checked luggage will be picked up at BIA and delivered directly to the departing aircraft. Buses will proceed directly to the aircraft at WAFB alert ramp. Luggage on arriving aircraft will be directly offloaded onto a vehicle parked on the WAFB alert ramp. WAFB will be notified, in advance, if a local funeral home requires access for pickup or delivery of deceased persons.

AIRCRAFT HANDLING AND GROUND SUPPORT EQUIPMENT

Air Force-owned fuel will not be provided. The air carriers will provide their own ground support equipment. Refueling equipment from BIA will be prepositioned at WAFB on the alert ramp. The Air Force shall not be responsible for any damage or loss to such equipment, and BIA expressly assumes all risks of any such loss or damage and agrees to indemnify and hold the United States harmless against any such damage or loss. No routine aircraft maintenance will be accomplished at WAFB. Emergency repairs and or maintenance are only authorized to avoid extended parking and storage of civil aircraft at WAFB.

CUSTOMS AND SECURITY

The installation commander will exercise administrative and security control over both the aircraft and passengers on WAFB. Customs officials will be transported to and from the base by air carrier representatives. The installation commander will cooperate with customer, health, and other public officials to expedite arrival and departure of the aircraft. Air carrier representatives will notify the WAFB Airfield Manager, in advance, of armed security or law enforcement officers arriving or departing on a flight. BIA officials and air carrier representatives must provide the WAFB Airfield Manager a list of employees, contractors, and vehicles requiring flightline access. Temporary passes will be issued to authorized individuals and vehicles.

FIRE, CRASH, AND RESCUE SERVICES

BIA will provide technical information and training for WAFB Fire Department personnel prior to (date) . Fire, Crash, and Rescue Services will be provided in an emergency, but fire trucks will not routinely park on the flightline for aircraft arrivals and departures. BIA will reimburse WAFB for all such services.

LIABILITY AND INDEMNIFICATION

The Air Force shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the use of WAFB by BIA under this Agreement, or for damages to the property of BIA or injuries to the person of BIA's officers, agents, servants, employees, or invitees. BIA agrees to assume all risks of loss or damage to property and injury or death to persons by reason of or incident to the use of WAFB under this Agreement and expressly waives any and all claims against the United States for any such loss, damage, personal injury, or death caused by or occurring as a consequence of such use. BIA further agrees to indemnify, save, and hold the United States, its officers, agents, and employees harmless from and against all claims, demands, or actions, liabilities, judgments, costs, and attorneys fees, arising out of, claimed on account of, or in any manner predicated upon personal injury, death or property damage resulting from, related to, caused by, or arising out of the use of WAFB under this Agreement.

FEES

Landing and parking fees will be charged in accordance with to AFI 10–1001, Civil Aircraft Landing Permits. Charges will be made in accordance with the appropriate Air Force Instructions for any services or supplies required from WAFB. The WAFB Airfield Manager will be responsible for consolidating all charges which will be billed to BIA not later than (date) by the Accounting and Finance Office.

IN WITNESS WHEREOF, the respective duly authorized representatives of the parties hereto have executed this Agreement on the date set forth below opposite their respective signatures.

_____

BIA Representative (Name and Title)

DATE _____

_____

WAFB Representative (Name and Title)

DATE _____

PART 861—DEPARTMENT OF DEFENSE COMMERCIAL AIR TRANSPORTATION QUALITY AND SAFETY REVIEW PROGRAM

Sec.
861.1 References.
861.2 Purpose.
861.3 Definitions.
861.4 DOD air transportation quality and safety requirements.
861.5 DOD Commercial Airlift Review Board procedures.
861.6 DOD review of foreign air carriers.
861.7 Disclosure of voluntarily provided safety-related information.

AUTHORITY: 10 U.S.C. 2640, 8013.

SOURCE: 67 FR 65698, Oct. 28, 2002, unless otherwise noted.

§ 861.1 References.

The following references apply to this part:

(a) 10 U.S.C. 2640, Charter Air Transportation of Members of the Armed Forces.

(b) Department of Defense Directive 4500.53, *Department of Defense Commercial Air Transportation Quality and Safety Review Program.*

§ 861.2 Purpose.

Department of Defense Directive 4500.53, *Department of Defense Commercial Air Transportation Quality and Safety Review Program*, charges the Commander-in-Chief (CINC), United States Transportation Command (USTRANSCOM), with ensuring the establishment of safety requirements and criteria for evaluating civil air carriers and operators (hereinafter collectively referred to as "air carriers") providing air transportation and operational support services to the Department of Defense (DOD). It also charges the CINC with ensuring the establishment of a Commercial Airlift Review Board (CARB) and providing policy guidance and direction for its operation. This part establishes DOD quality and safety criteria for air carriers providing or seeking to provide air transportation and, at the discretion of the CARB or higher authority, operational support services to the DOD. This part also includes the operating procedures of the CARB. The CARB has the authority to suspend air carriers from DOD use or

take other actions when issues of air carrier quality and air safety arise.

§861.3 Definitions.

(a) *Air carrier*. Individuals or entities that operate commercial fixed and rotary wing aircraft in accordance with the Federal Aviation Regulations (14 CFR Chapter I) or equivalent regulations issued by a country's Civil Aviation Authority (CAA) and which provide air transportation or operational support services. Commercial air carriers under contract with, or operating on behalf of the DOD shall have a FAA or CAA certificate.

(b) *Air transportation services*. The transport of DOD personnel or cargo by fixed or rotary wing commercial aircraft, where such services are acquired primarily for the transportation of DOD personnel and cargo, through donation or any form of contract, tender, blanket ordering agreement, Government charge card, Government or commercial transportation request (TR), bill of lading, or similar instruments. Air transportation services also include medical evacuation services, paratrooper drops, and charter airlift and group travel arranged by the Military Service Academies, foreign military sales, nonappropriated fund instrumentalities by other DOD and non-DOD activities for DOD personnel. All air carriers providing air transportation services to DOD must have a FAA or CAA certificate. The policy contained in this Directive shall not apply to individually procured, discretionary air travel, such as that associated with military leave or pass.

(c) *Civil Aviation Authority (CAA)*. The CAA refers to the organization within a country that has the authority and responsibility to regulate civil aviation. The term CAA is used throughout this part since these requirements are applicable to both U.S. and foreign carriers doing business with DOD. The term CAA thus includes the U.S. Federal Aviation Administration (FAA).

(d) *Code sharing*. Code sharing is a marketing arrangement in which an air carrier places its designator code on a flight operated by another air carrier and sells tickets for that flight.

(e) *DOD approval*. DOD approval in the context of this part refers to the process by which air carriers seeking to provide passenger or cargo airlift services (hereinafter referred to as air transportation services) to the DOD must be screened and evaluated by the DOD Air Carrier Survey and Analysis Office or other entity authorized by the CARB, and approved for DOD use by the CARB. Once initial approval is obtained, a DOD approved air carrier must remain in an approved status to be eligible for DOD business. Although not generally required, the CARB or higher authority may, on a case-by-case basis, require DOD approval of air carriers providing operational support services to DOD.

(f) *DOD air carrier safety and quality review process*. Includes four possible levels of review with increasing authority. The responsibilities of each are described in more detail in the reference in §861.1 (b). These levels consist of the:

(1) DOD Air Carrier Survey and Analysis Office;

(2) DOD Commercial Airlift Review Board (CARB);

(3) Commander-in-Chief, U.S. Transportation Command, or USCINCTRANS; and

(4) Secretary of Defense. (NOTE: A DOD-level body, the Commercial Airlift Review Authority, or CARA, provides advice and recommendations to the Secretary of Defense.)

(g) *Federal Aviation Administration (FAA) International Safety Assessment (IASA) program and categories*. The FAA IASA program assesses the ability of a foreign country's CAA to adhere to international standards established by the United Nation's technical agency for aviation, the International Civil Aviation Organization (ICAO). The FAA has established ratings for the status of countries as follows:

(1) *Category 1—Does comply with ICAO standards*. A country's CAA has been found to license and oversee air carriers in accordance with ICAO aviation safety standards.

(2) *Category 2—Does not comply with ICAO standards*. A country's CAA does not meet ICAO standards for aviation oversight. Operations to the U.S. by a carrier from a Category 2 country are limited to those in effect at the time a country is classified as Category 2 and

are subjected to heightened FAA surveillance. Expansion or changes in services to the U.S. are not permitted while a country is in Category 2 status unless the carrier arranges to have new services conducted by an air carrier from a Category 1 country. Category 2 countries that do not have operations to the U.S. at the time of the FAA assessment are not permitted to commence such operations unless it arranges to have its flights conducted by an air carrier from a Category 1 country.

(3) *Non-rated*. A country's CAA is labeled "non-rated" if it has not been assessed by the FAA.

(h) *GSA City Pair Program*. A program managed by the General Services Administration in which U.S. air carriers compete for annual contracts awarding U.S. Government business for specific domestic and international scheduled service city pair routes.

(i) *Group travel*. Twenty-one or more passengers on orders from the same organization traveling on the same date to the same destination to attend the same function.

(j) *Letter of Warning*. A notice to a DOD approved air carrier of a failure to satisfy safety or airworthiness requirements which, if not remedied, may result in temporary nonuse or suspension of the air carrier by the DOD. Issuance of a *Letter of Warning* is not a prerequisite to a suspension or other action by the CARB or higher DOD authority.

(k) *On-site Capability Survey*. The most comprehensive evaluation performed by DOD's Air Carrier Survey and Analysis Office. Successful completion of this evaluation is required of most air carriers before they may be approved to provide air transportation services to DOD. Once approved, air carriers are subject to periodic On-site Capability Surveys, as specified at Enclosure 3 in the reference in § 861.1(b).

(l) *Operational support services*. Missions performed by air carriers that use fixed or rotary-winged aircraft to provide services other than air transportation services as defined in paragraph (b) of this section. Examples include, but are not limited to, range instrumentation and services, target-towing, sling loads, and electronic countermeasures target flights. Air carriers providing only operational support services do not require advance DOD approval and are not subject to the initial or periodic on-site survey requirements under this part, unless directed by the CARB or higher authority. All air carriers providing operational support services to DOD must have a FAA or CAA certificate and are required to maintain applicable FAA or CAA standards absent deviation authority obtained pursuant to 14 CFR 119.55 or similar CAA rules.

(m) *Performance assessments*. Reviews conducted by U.S. air carriers when evaluating foreign air carriers with which they have code share arrangements, using performance-based factors. Such assessments include reviewing a variety of air carrier data including history, safety, scope/size, financial condition, equipment, flight operations and airworthiness issues.

(n) *Performance evaluations*. Reviews conducted by DOD as directed in the references in § 861.1(a) and (b). These evaluations include a review of air carrier flight operations, maintenance departments, safety programs and other air carrier areas as necessary. Performance evaluations are not conducted on-site, but rely on information collected primarily from the FAA and the National Transportation Safety Board (NTSB).

(o) *Preflight safety inspection*. A visual safety inspection of the interior and exterior of an air carrier's aircraft performed by DOD personnel in accordance with the references in § 861.1(a) and (b).

(p) *Suspension*. The exclusion of an air carrier from providing services to the DOD. The period of suspension will normally:

(1) Remain in effect until the air carrier furnishes satisfactory evidence that the conditions causing the suspension have been remedied and has been reinstated by the CARB, or;

(2) Be for a fixed period of time as determined at the discretion of the CARB.

(q) *Temporary nonuse*. The immediate exclusion of a DOD approved air carrier from providing services to the DOD pending a decision on suspension. Normally, temporary nonuse will be for a

period of 30 days or less. However, by mutual agreement of the CARB and the air carrier involved, a suspension hearing or decision may be delayed and the air carrier continued in a temporary nonuse status for an extended period of time.

(r) *Voluntarily provided safety-related information*. Information which consists of nonfactual safety-related data, reports, statements, and other information provided to DOD by an air carrier at any point in the evaluation process described in this Part. It does not include factual safety-related information, such as statistics, maintenance reports, training records, flight planning information, and the like.

§861.4 DOD air transportation quality and safety requirements.

(a) *General*. The DOD, as a customer of air transportation and operational support services, expects air carriers used by DOD to employ programs and business practices that not only ensure good service but also enhance the safety, operational, and maintenance standards established by applicable Civil Aviation Authority (CAA) regulations. Accordingly, and as required by the references in §861.1 (a) and (b), the DOD has established a set of quality and safety criteria and requirements that reflect the type programs and practices DOD seeks from air carriers providing services to DOD. Air carriers must meet and maintain these requirements in order to be eligible for DOD business. Air carriers providing air transportation services to DOD either directly by contract or agreement, or indirectly through the General Services Administration (GSA) City Pair Program or some other arrangement, must be approved by DOD prior to providing such services and remain in an approved status throughout the contract, agreement, or arrangement performance period. This approval entails successful completion of initial and recurring on-site surveys as well as periodic performance evaluations in accordance with the reference in §861.1(b). The quality and safety criteria and requirements set forth in this part complement rather than replace the CAA criteria applicable to air carriers. Air carriers normally remain fully subject to applicable CAA regulations (CARs) while performing business for the DOD, even when the aircraft involved is used exclusively for DOD missions. The inspection and oversight criteria set forth in this part do not, as a general rule, apply to air carriers providing only operational support services to DOD. However, in the event concerns relating to the safety of such a carrier arise, the CARB or higher authority may, on a case-by-case basis, direct an appropriate level of oversight under the authority of this part.

(b) *Applicability*. (1) The evaluation, quality and safety criteria and requirements set forth in this part apply to air carriers providing or seeking to provide air transportation services to DOD.

(2) Foreign air carriers performing portions of GSA City Pair routes awarded to U.S. air carriers under a code-sharing arrangement, as well as foreign air carriers providing individually-ticketed passenger service to DOD personnel traveling on official business, may be subject to limited oversight and review pursuant to §861.6.

(3) The inspection and oversight requirements, as well as the quality and safety criteria of this part may, on a case-by-case basis and at the discretion of the CARB or higher authority, be applied to air carriers seeking to provide or providing operational support services as defined in §861.3(l).

(4) The inspection and oversight requirements of this part do not apply to aircraft engaged in medical transport services if procured under emergency conditions to save life, limb or eyesight. Likewise, the inspection and oversight requirements of this part are not applicable when DOD is not involved in the procurement of the medical transportation services. For example, when specific medical treatment is obtained on an individual basis by or for DOD personnel with medical transportation provided, as needed, at the direction of the non-DOD medical care giver. This includes situations where DOD, through TRICARE or otherwise, pays for such transportation as part of the costs of medical services provided.

(c) *Scope and nature of the evaluation program*—(1) *Evaluation requirement*.

The provision of air transportation services under a contract or agreement with or on behalf of DOD, requires the successful completion of an initial on-site survey and approval by the CARB under this part in order to be eligible for DOD business. In addition, U.S. air carriers awarded contracts under the GSA City Pair Program, including those that perform part of the contract under a code-sharing arrangement with the U.S. air carrier awarded the contract, must successfully complete an initial on-site survey and be approved by the CARB for DOD use under this part prior to beginning performance of the GSA contract. Once approved by DOD, air carriers providing air transportation services are subject to recurring on-site surveys and performance evaluations and assessments throughout the duration of the relevant contract or agreement. The frequency and scope of these surveys and performance reviews will be in accordance with Enclosure 3 of the reference in § 861.1(b).

(2) *Office of primary responsibility*. Evaluations are performed by the DOD Air Carrier Survey and Analysis Office located at Scott Air Force Base, Illinois. The mailing address of this office is HQ AMC/DOB, 402 Scott Drive Unit 3A1, Scott AFB IL 62225–5302. The website address is *https://public.scott.af.mil/hqamc/dob/index.htm*.

(3) *Items considered in the evaluation process*. The specifics of the applicable DOD contract or agreement (if any), the applicable CAA regulations, and the experienced judgment of DOD personnel will be used to evaluate an air carrier's capability to perform services for DOD. The survey may also include, with the air carrier's coordination, observation of cockpit crew performance, as well as ramp inspections of selected company aircraft. In the case of air carriers seeking to provide air transportation services, after satisfactory completion of the initial survey and approval by the CARB as a DOD air carrier, follow-up surveys will be conducted on a recurring basis and when otherwise required to validate adherence to DOD quality and safety requirements. DOD personnel will also assess these quality and safety requirements when conducting periodic air carrier performance evaluations. The size of an air carrier, along with the type and scope of operations will be considered during the on-site survey. For example, while an air taxi operator may not have a formal flight control function, such as a 24-hour dispatch organization, that same air taxi operator is expected to demonstrate some type of effective flight following capability. On the other hand, a major air carrier is expected to have a formal flight control or dispatch function. Both, however, will be evaluated based on the effectiveness and quality of whatever flight following function they do maintain. In the case of air carriers seeking to provide operational support services, the type, scope and frequency of evaluation, if any, performed by DOD or other entity will be as directed by the CARB or higher authority.

(d) *Status of aircraft performing services for DOD*. All air carriers providing air transportation or operational support services to the DOD shall have FAA or CAA air carrier or commercial operator certificates and shall remain under FAA and/or CAA regulatory and safety oversight during performance of the DOD mission. Aircraft performing services for or on behalf of DOD shall be on the air carrier's operating certificate, and remain on that certificate while performing the DOD mission. The installation of any special equipment needed to perform services for DOD shall be FAA or CAA approved or an appropriate FAA or CAA waiver obtained.

(e) *Evaluation requirements*. The air carrier requirements stated in this part provide the criteria against which would-be DOD and GSA City Pair Program air carrier contractors, as well as air carriers providing services on behalf of DOD, may be subjectively evaluated by DOD. These requirements are neither all-inclusive nor inflexible in nature. They are not replacements for the certification criteria and other regulations established by the CAA. Rather, these requirements complement CAA certification criteria and regulations and describe the enhanced level of service required by DOD. The relative weight accorded these requirements in a given case, as well as the determination of whether an air carrier meets or exceeds them, is a matter

within the sole discretion of the DOD Air Carrier Survey and Analysis Office and the CARB, subject to the statutory minimums provided in the reference in §861.1(a).

(1) *Quality and safety requirements—prior experience.* U.S. and foreign air carriers applying for DOD approval in order to conduct air transportation services for or on behalf of DOD under a contract or agreement with DOD, the GSA City Pair Program, or by some other arrangement are required to possess 12 months of continuous service equivalent to the service sought by DOD. In applying this requirement, the following guidance will be used by DOD authorities:

(i) "12 months" refers to the 12 calendar months immediately preceding the request for DOD approval.

(ii) "Continuous" service means the carrier must have performed revenue-generating services of the nature for which DOD approval is sought, as an FAA part 121, 125, 127, or 135 (14 CFR 121, 125, 127, or 135) air carrier (or foreign CAA equivalent if appropriate) on a recurring, substantially uninterrupted basis. The services must have occurred with such frequency and regularity as to clearly demonstrate the carrier's ability to perform and support sustained, safe, reliable, and regular services of the type DOD is seeking. Weekly flight activity is normally considered continuous, while sporadic or seasonal operations (if such operations are the only operations conducted by the carrier) may not suffice to establish a carrier's ability to perform and support services in the sustained, safe, reliable, and regular manner required by DOD. The ability of a carrier to perform services of the type sought by DOD may be called into question if there have been lengthy periods of time during the qualifying period in which the carrier has not operated such services. Consequently, any cessation, or nonperformance of the type of service for which approval is sought may, if it exceeds 30 days in length during the qualifying period and depending on the underlying factual circumstances, necessitate "restarting" the 12-month continuous service period needed to obtain DOD approval.

(iii) "Equivalent to the services sought by DOD" means service offered to qualify for DOD approval must be substantially equivalent to the type of service sought by DOD. The prior experience must be equivalent in difficulty and complexity with regard to the distances flown, weather systems encountered, international and national procedures, the same or similar aircraft, schedule demands, aircrew experience, number of passengers handled, frequency of operations, and management required. There is not a set formula for determining whether a particular type of service qualifies. The performance of cargo services is not considered to be "substantially equivalent" to the performance of passenger services, and may not be used to meet the 12 continuous months requirement for passenger services. However, when a carrier already providing cargo services to DOD applies to carry passengers, the CARB may consider the carrier's cargo performance and experience in assessing whether a carrier is qualified to carry passengers on a specific type or category of aircraft, over certain routes or stage lengths, or under differing air traffic control, weather, or other conditions. The following examples are illustrative and not intended to reflect or predict CARB action in any given case:

Example 1: Coyote Air has operated commercial passenger commuter operations in the U.S. for a number of years flying a variety of twin-engine turboprop aircraft. They have also been a DOD-approved cargo carrier, providing international cargo services using DC–10 freighter aircraft. Coyote Air purchases a passenger version DC–10, and seeks DOD approval to provide international passenger service for DOD. The CARB may decide that although Coyote Air has provided passenger services for 12 continuous months, those services are not substantially equivalent to those being sought by DOD. While the carrier may have considerable operational experience with the DC–10, its commuter passenger operations are not substantially equivalent to the service now proposed—international passenger services on large jet aircraft.

Example 2: Acme Air has been a DOD-approved cargo carrier for several years, operating domestic and international missions with MD–11 freighter aircraft. At the same time, Acme has been performing commercial international passenger services with B–757

aircraft. Acme Air purchases a MD–11 passenger aircraft and applies to perform passenger services for DOD using the MD–11. Assuming Acme has performed B–757 passenger service for 12 continuous months immediately preceding its application, the CARB may consider these passenger services substantially equivalent to those proposed since both involve the operation of large multi-engine aircraft in an international environment. The CARB may also consider Acme's operational history with its MD–11 freighter aircraft in determining whether the carrier is competent to provide MD–11 passenger service in the same environment.

(iv) Once approved by DOD, an air carrier's failure to maintain continuous operations of the type for which approval has been granted may, at the discretion of the CARB, be grounds for nonuse or suspension under this part, rendering the carrier ineligible for DOD business during the nonuse or suspension period. Any cessation or nonperformance of the type of service for which approval has been obtained may, if it exceeds 30 days in length and depending on the circumstances, provide the basis for the CARB to take appropriate action.

(2) *Quality and safety requirements—air carrier management.* Management has clearly defined safety as the number one company priority, and safety is never sacrificed to satisfy passenger concern, convenience, or cost. Policies, procedures, and goals that enhance the CAA's minimum operations and maintenance standards have been established and implemented. A cooperative response to CAA inspections, critiques, or comments is demonstrated. Proper support infrastructure, including facilities, equipment, parts, and qualified personnel, is provided at the certificate holder's primary facility and en route stations. Personnel with aviation credentials and experience fill key management positions. An internal quality audit program or other method capable of identifying in-house deficiencies and measuring the company's compliance with their stated policies and standards has been implemented. Audit results are analyzed in order to determine the cause, not just the symptom, of any deficiency. The result of sound fiscal policy is evident throughout the company. Foreign code-sharing air carrier partners are audited at least every two years using DOD-approved criteria and any findings resolved. Comprehensive disaster response plans and, where applicable, family support plans, must be in place and exercised on a regular basis.

(3) *Quality and safety requirements—operations*—(i) *Flight safety.* Established policies that promote flight safety. These policies are infused among all aircrew and operational personnel who translate the policies into practice. New or revised safety-related data are promptly disseminated to affected personnel who understand that deviation from any established safety policy is unacceptable. An audit system that detects unsafe practices is in place and a feedback structure informs management of safety policy results including possible safety problems. Management ensures that corrective actions resolve every unsafe condition.

(ii) *Flight operations.* Established flight operations policies and procedures are up-to-date, reflect the current scope of operations, and are clearly defined to aviation department employees. These adhered-to procedures are further supported by a flow of current, management-generated safety and operational communications. Managers are in touch with mission requirements, supervise crew selection, and ensure the risk associated with all flight operations is reduced to the lowest acceptable level. Flight crews are free from undue management pressure and are comfortable with exercising their professional judgment during flight activities, even if such actions do not support the flight schedule. Effective lines of communication permit feedback from line crews to operations managers. Personnel records are maintained and reflect such data as experience, qualifications, and medical status.

(iii) *Flight crew hiring.* Established procedures ensure that applicants are carefully screened, including a review of the individual's health and suitability to perform flight crew duties. Consideration is given to the applicant's total aviation background, appropriate experience, and the individual's potential to perform safely. Freedom from alcohol abuse and illegal drugs is required. If new-hire cockpit

crewmembers do not meet industry standards for experience and qualification, then increased training and management attention to properly qualify these personnel are required.

(iv) *Aircrew training*. Training, including recurrent training, which develops and refines skills designed to eliminate mishaps and improve safety, is essential to a quality operation. Crew coordination training that facilitates full cockpit crews training and full crew interaction using standardized procedures and including the principles of Crew Resource Management (CRM) is required. Programs involving the use of simulators or other devices that can provide realistic training scenarios are desired. Captain and First Officer training objectives cultivate similar levels of proficiency. Appropriate emergency procedures training (*e.g.*, evacuation procedures) is provided to flight deck and flight attendant personnel as a total crew whenever possible; such training focuses on cockpit and cabin crews functioning as a coordinated team during emergencies. Crew training—be it pilot, engineer, or flight attendant—is appropriate to the level of risk and circumstances anticipated for the trainee. Training programs have the flexibility to incorporate and resolve recurring problem areas associated with day-to-day flight operations. Aeromedical crews must also be trained in handling the specific needs of the categories of patients normally accepted for transportation on the equipment to be used. Trainers are highly skilled in both subject matter and training techniques. Training received is documented, and that documentation is maintained in a current status.

(v) *Captain upgrade training*. A selection and training process that considers proven experience, decision making, crew resource management, and response to unusual situations, including stress and pressure, is required. Also important is emphasis on captain responsibility and authority.

(vi) *Aircrew scheduling*. A closely monitored system that evaluates operational risks, experience levels of crewmembers, and ensures the proper pairing of aircrews on all flights is required. New captains are scheduled with highly experienced first officers, and new or low-time first officers are scheduled with experienced captains. Except for aircraft new to the company, captains and first officers assigned to DOD charter passenger missions possess at least 250 hours combined experience in the type aircraft being operated. The scheduling system involves an established flight duty time program for aircrews, including flight attendants, carefully managed so as to ensure proper crew rest and considers quality-of-life factors. Attention is given to the stress on aircrews during strikes, mergers, or periods of labor-management difficulties.

(vii) *In-flight performance*. Aircrews, including flight attendants and flight medical personnel, are fit for flight duties and trained to handle normal, abnormal, and emergency situations. They demonstrate crew discipline and a knowledge of aviation rules; use company-developed standardized procedures; adhere to checklists; and emphasize safety, including security considerations, throughout all preflight, inflight, and postflight operations. Qualified company personnel evaluate aircrews and analyze results; known performance deficiencies are eliminated. Evaluations ensure aircrews demonstrate aircraft proficiency in accordance with company established standards. Flight crews are able to determine an aircraft's maintenance condition prior to flight and use standardized methods to accurately report aircraft deficiencies to the maintenance activity.

(viii) *Operational control/support*. Effective mission control includes communications with aircrews and the capability to respond to irregularities or difficulties. Clear written procedures for mission preparation and flight following aircraft and aircrews are provided. There is access to weather, flight planning, and aircraft maintenance data. There are personnel available who are knowledgeable in aircraft performance and mission requirements and that can correctly respond to emergency situations. There is close interface between operations and maintenance, ensuring a mutual awareness of aircraft operational and maintenance status. Procedures to notify

DOD in case of an accident or serious incident have been established. Flight crews involved in such accidents or incidents report the situation to company personnel who, in turn, have procedures to evaluate the flight crew's capability to continue the mission. Aircraft involved in accidents or incidents are inspected in accordance with Civil Aviation Regulations and a determination made as to whether or not the aircraft is safe for continued operations.

(ix) *DOD charter procedures.* Detailed procedures addressing military charter requirements are expected. The level of risk associated with DOD charter missions does not exceed the risks inherent in the carrier's non-DOD daily flight operations. Complete route planning and airport analyses are accomplished, and actual passenger and cargo weights are used in computing aircraft weight and balance.

(4) *Quality and safety requirements—maintenance.* Maintenance supervisors ensure all personnel understand that in spite of scheduling pressure, peer pressure, supervisory pressure, or other factors, the airplane must be airworthy prior to flight. Passenger and employee safety is a paramount management concern. Quality, completeness, and integrity of work are trademarks of the maintenance manager and maintenance department. Nonconformance to established maintenance practices is not tolerated. Management ensures that contracted maintenance, including repair and overhaul facilities, is performed by maintenance organizations acceptable to the CAA.

(i) *Maintenance personnel.* Air carriers are expected to hire and train the number of employees required to safely maintain the company aircraft and support the scope of the maintenance operations both at home station (the company's primary facility) and at en route locations. These personnel ensure that all maintenance tasks, including required inspections and airworthiness directives, are performed; that maintenance actions are properly documented; and that the discrepancies identified between inspections are corrected. Mechanics are fit for duty, properly certificated, the company verifies certification, and these personnel possess the knowledge and the necessary aircraft-specific experience to accomplish the maintenance tasks. Noncertified and inexperienced personnel received proper supervision. Freedom from alcohol abuse and illegal drugs is required.

(ii) *Quality assurance.* A system that continuously analyzes the performance and effectiveness of maintenance activities and maintenance inspection programs is required. This system evaluates such functions as reliability reports, audits, component tear-down reports, inspection procedures and results, tool calibration program, real-time aircraft maintenance actions, warranty programs, and other maintenance functions. The extent of this program is directly related to the air carrier's size and scope of operation. The cause of any recurring discrepancy or negative trend is researched and eliminated. Action is taken to prevent recurrence of these discrepancies and preventive actions are monitored to ensure effectiveness. The results of preventive actions are provided to appropriate maintenance technicians.

(iii) *Maintenance inspection activity.* A process to ensure required aircraft inspections are completed and the results properly documented is required. Also required is a system to evaluate contract vendors, suppliers, and their products. Inspection personnel are identified, trained (initial and recurrent), and provided guidance regarding inspector responsibility and authority. The inspection activity is normally a separate entity within the maintenance department.

(iv) *Maintenance training.* Training is conducted commensurate with the size and type of maintenance function being performed. Continuing education and progressive experience are provided for all maintenance personnel. Orientation, familiarization, on-the-job, and appropriate recurrent training for all full and part-time personnel are expected. The use of such training aids as mockups, simulators, and computer-based training enhances maintenance training efforts and is desired. Training documentation is required; it is current, complete, well maintained, and

correctly identifies any special authorization such as inspection and airworthiness release. Trainers are fully qualified in the subject manner.

(v) *Maintenance control.* A method to control maintenance activities and track aircraft status is required. Qualified personnel monitor maintenance preplanning, ensure completion of maintenance actions, and track deferred discrepancies. Deferred maintenance actions are identified to supervisory personnel and corrected in accordance with the criteria provided by the manufacturer or regulatory agency. Constant and effective communications between maintenance and flight operations ensure an exchange of critical information.

(vi) *Aircraft maintenance program.* Aircraft are properly certified and maintained in a manner that ensures they are airworthy and safe. The program includes the use of manufacturer's and CAA information, as well as company policies and procedures. Airworthiness directives are complied with in the prescribed time frame, and service bulletins are evaluated for applicable action. Approved reliability programs are proactive, providing management with visibly on the effectiveness of the maintenance program; attention is given to initial component and older aircraft inspection intervals and to deferred maintenance actions. Special tools and equipment are calibrated.

(vii) *Maintenance records.* Maintenance actions are well documented and provide a complete record of maintenance accomplished and, for repetitive actions, maintenance required. Such records as aircraft log books and maintenance documentation are legible, dated, clean, readily identifiable, and maintained in an orderly fashion. Inspection compliance, airworthiness release, and maintenance release records, etc., are completed and signed by approved personnel.

(viii) *Aircraft appearance.* Aircraft exteriors, including all visible surfaces and components, are clean and well maintained. Interiors are also clean and orderly. Required safety equipment and systems are available and operable.

(ix) *Fueling and servicing.* Aircraft fuel is free from contamination, and company fuel facilities (farms) are inspected and results documented. Procedures and instructions pertaining to servicing, handling, and storing fuel and oil meet established safety standards. Procedures for monitoring and verifying vendor servicing practices are included in this program.

(x) *Maintenance manuals.* Company policy manuals and manufacturer's maintenance manuals are current, available, clear, complete, and adhered to by maintenance personnel. These manuals provide maintenance personnel with standardized procedures for maintaining company aircraft. Management policies, lines of authority, and company maintenance procedures are documented in company manuals and kept in a current status.

(xi) *Maintenance facilities.* Well maintained, clean maintenance facilities, adequate for the level of aircraft repair authorized in the company's CAA certificate are expected. Safety equipment is available in hangars, shops, etc., and is serviceable. Shipping, receiving, and stores areas are likewise clean and orderly. Parts are correctly packaged, tagged, segregated, and shelf life properly monitored.

(5) *Quality and safety requirements—security.* Company personnel receive training in security responsibilities and practice applicable procedures during ground and in-flight operations. Compliance with provisions of the appropriate standard security program, established by the Transportation Security Administration or foreign equivalent, is required for all DOD missions.

(6) *Quality and safety requirements—specific equipment requirements.* Air carriers satisfy DOD equipment and other requirements as specified in DOD agreements.

(7) *Quality and safety requirements—oversight of commuter or foreign air carriers in code-sharing agreements.* Air carriers awarded a route under the Passenger Standing Route Order (PSRO) program, the GSA City Pair Program, or other DOD program, that includes performance of a portion of the route by a commuter or foreign air carrier with which it has a code-sharing arrangement, must have a formal procedure in place to periodically review and assess the code-sharing air carrier's safety, operations, and maintenance

programs. The extent of such reviews and assessments must be consistent with, and related to, the code-sharing air carrier's safety history. These procedures must also provide for actual inspections of the foreign code-sharing air carrier if the above reviews and assessments indicate questionable safety practices.

(8) *Quality and safety requirements—aeromedical transport requirements.* (i) The degree of oversight is as determined by the CARB or higher authority. When an inspection is conducted, DOD medical personnel may also participate to assess the ability to provide the patient care and any specialty care required by DOD. The CARB's review will be limited solely to issues related to flight safety.

(ii) Portable Electronic Devices (PEDs) used in the provision of medical services or treatment on board aircraft are tested for non-interference with aircraft systems and the results documented to show compliance with 14 CFR 91.21 or other applicable CAA regulations. If there are no CAA regulations, actual use/inflight testing of the same or similar model PED prior to use with DOD patients is the minimum requirement.

§ 861.5 DOD Commercial Airlift Review Board procedures.

(a) This section establishes procedures to be used by the DOD when, in accordance with references in § 861.1(a) and (b):

(1) An air carrier is subject to review or other action by the DOD Commercial Airlift Review Board, or CARB;

(2) A warning, suspension, temporary nonuse, or reinstatement action is considered or taken against a carrier by the CARB; or

(3) An issue involving an air carrier is referred by the CARB to higher authority for appropriate action.

(b) These procedures apply to air carriers seeking to provide or already providing air transportation services to DOD. It also applies to U.S. or foreign air carriers providing operational support services to DOD which, on a case-by-case basis and at the discretion of the CARB or higher authority, require some level of oversight by DOD.

(c) An air carrier's sole remedy in the case of a suspension decision by the CARB is the appellate process under this part.

(d) Quality and safety issues relating to air carriers used, or proposing to be used, by DOD, per reference (b) must be referred to the CARB for appropriate disposition.

(e) *CARB responsibilities.* As detailed in the reference in § 861.1(b), the CARB provides a multifunctional review of the efforts of the DOD Air Carrier Survey and Analysis Office and is the first level decision authority in DOD on quality and safety issues relating to air carriers. Responsibilities include, but are not limited to: the review and approval or disapproval of air carriers seeking initial approval to provide air transportation service to DOD; the review and approval or disapproval of air carriers in the program that do not meet DOD quality and safety requirements; the review and approval or disapproval of air carriers in the program seeking to provide a class of service different from that which they are currently approved; taking action to suspend, reinstate, or place into temporary nonuse or extended temporary nonuse, DOD approved carriers; taking action, on an as needed basis, to review, suspend, reinstate, or place into temporary nonuse or extended temporary nonuse, an air carrier providing operational support services to DOD; and, referring with recommendations, issues requiring resolution or other action by higher authority.

(f) *CARB administrative procedures*—(1) *Membership.* The CARB will consist of four voting members appointed by USCINCTRANS from USTRANSCOM and its component commands. These members and their alternates will be general officers or their civilian equivalent, with experience in the operations, maintenance, transportation, or air safety fields. A Chairman and alternate will be designated. Nonvoting CARB members will be appointed as necessary by USCINCTRANS. A nonvoting recorder will also be appointed.

(2) *Decisions.* Decisions of the CARB will be taken by a majority vote of the voting members present, with a minimum of three voting members (or their alternates) required to constitute

a quorum. In the event of a tie, the Chair of the CARB will decide the issue.

(3) *Meetings of the CARB*. The CARB may meet either in person or by some electronic means. It will be convened by either USCINCTRANS or the Chair of the CARB. The meeting date, time, and site of the CARB will be determined at the time of the decision to convene the CARB. Minutes of CARB meetings will be taken by the recorder, summarized, and preserved with all other records relating to the CARB meeting. The recorder will ensure the air carrier and appropriate DOD and federal agencies are notified of the CARB's decision(s) and reasons therefore. In the event of a fatal accident, the CARB shall convene as soon as possible but not later than 72 hours after notification by the Chair.

(g) *CARB operating procedures*—(1) *Placing an air carrier into temporary nonuse*. (i) In case of a fatal aircraft accident or for other good cause, two or more voting members of the CARB may jointly make an immediate determination whether to place the air carrier involved into a temporary nonuse status pending suspension proceedings. Prior notice to the air carrier is not required.

(ii) The carrier shall be promptly notified of the temporary nonuse determination and the basis therefore.

(iii) Temporary nonuse status terminates automatically if suspension proceedings are not commenced, as set out in paragraph (g)(2) of this section, within 30 days of inception unless the CARB and air carrier mutually agree to extend the temporary nonuse status.

(2) *Suspension of an air carrier*. (i) On a recommendation of the DOD Air Carrier Survey and Analysis Office or any individual voting member of the CARB, the CARB shall consider whether or not to suspend a DOD approved air carrier.

(ii) If the CARB determines that suspension may be appropriate, it shall notify the air carrier that suspension action is under consideration and of the basis for such consideration. The air carrier will be offered a hearing within 15 days of the date of the notice, or other such period as granted by the CARB, at which the air carrier may be present and may offer evidence. The hearings shall be as informal as practicable, consistent with administrative due process. Formal rules of evidence do not apply.

(iii) The types of evidence which may be considered includes, but is not limited to:

(A) Information and analysis provided by the DOD Air Carrier Survey and Analysis Office.

(B) Information submitted by the air carrier.

(C) Information relating to action that may have been taken by the air carrier to:

(*1*) Correct the specific deficiencies that led the CARB to consider suspension; and

(*2*) Preclude recurring similar deficiencies.

(D) Other matters the CARB deems relevant.

(iv) The CARB's decisions on the reception or exclusion of evidence shall be final.

(v) Air carriers shall have the burden of proving their suitability to safely perform DOD air transportation and/or operational support services by clear and convincing evidence.

(vi) After the conclusion of such hearing, or if no hearing is requested and attended by the air carrier within the time specified by the CARB, the CARB shall consider the matter and make a final decision whether or not to suspend the air carrier or to impose such lesser sanctions as appropriate. The air carrier will be notified of the CARB's decision.

(3) *Reinstatement*. (i) The CARB may consider reinstating a suspended carrier on either CARB motion or carrier motion, unless such carrier has become ineligible in the interim.

(ii) The carrier has the burden of proving by clear and convincing evidence that reinstatement is warranted. The air carrier must satisfy the CARB that the deficiencies, which led to suspension, have been corrected and that action has been implemented to preclude the recurrence of similar deficiencies.

(iii) Air carrier evidence in support of reinstatement will be provided in a timely manner to the CARB for its review. The CARB may independently

corroborate the carrier-provided evidence and may, at its option, convene a hearing and request the participation of the air carrier.

(4) *Appeal of CARB decisions.* (i) An air carrier placed in suspension by the CARB may administratively appeal this action to USCINCTRANS. An appeal, if any, must be filed in writing, with the DOD Air Carrier Survey and Analysis Office, and postmarked within 15 workdays of receipt of notice of the CARB's suspension decision. In the sole discretion of USCINCTRANS, and for good cause shown, the suspension may be stayed pending action on the appeal.

(ii) Air carriers shall not be entitled to a de novo hearing or personal presentation before the appellate authority.

(iii) The decision of the appellate authority is final and is not subject to further administrative review or appeal.

(5) *Referral of issues to higher authorities.* The approval or disapproval of an air carrier for use by DOD, the placing of approved carriers into temporary nonuse status, and the suspension and reinstatement of approved carriers, are all decisions which must be made by the CARB. Other matters may be referred by the CARB to USCINCTRANS for appropriate action, with or without recommendations by the CARB. The CARB will forward for decision, through USCINCTRANS to the Under Secretary of Defense (Acquisition, Technology and Logistics) (USD(AT&L)), all air carrier use/nonuse recommendations involving foreign air carriers other than those providing charter transportation or operational support service to the Department of Defense.

§ 861.6 DOD review of foreign air carriers.

Foreign air carriers providing or seeking to provide services to DOD shall be subject to review and, if appropriate, approval by DOD. Application of the criteria and requirements of this part and the degree of oversight to be exercised by DOD, if any, over a foreign air carrier depends upon the type of services performed and, in some instances, by the quality of oversight exercised by the foreign air carrier's CAA. The scope and frequency of the review of any given foreign air carrier under this part will be at the discretion of the CARB or higher authority.

(a) *Foreign air carriers seeking to provide or providing air transportation services under a contract or Military Air Transportation Agreement with DOD, or pursuant to another arrangement entered into by, or on behalf of, DOD.* Foreign air carriers seeking to provide or providing air transportation services under a contract or Military Air Transportation Agreement with DOD, must meet all requirements of § 861.4, and be approved by the CARB in accordance with § 861.5. This includes foreign air carriers seeking to provide, or providing, airlift services to DOD personnel pursuant to an arrangement entered into by another federal agency, state agency, foreign government, international organization, or other entity or person on behalf of, or for the benefit of, DOD, regardless of whether DOD pays for the airlift services provided. For purposes of establishing the degree of oversight and review to be conducted under the DOD Commercial Air Transportation Quality and Safety Review Program, such foreign air carriers are considered the same as U.S. carriers. In addition, they must have an operating certificate issued by the appropriate CAA using regulations which are the substantial equivalent of those found in the U.S. FARs, and must maintain such certification throughout the term of the contract or agreement. The CAA responsible for exercising oversight of the foreign air carrier must meet ICAO standards as determined by ICAO, or the FAA under the FAA's International Aviation Safety Assessment Program.

(b) *Foreign air carriers providing passenger services under the GSA City Pair Program.* Foreign air carriers performing any portion of a route awarded to a U.S. air carrier under the GSA City Pair Program pursuant to a codesharing agreement with that U.S. air carrier, are generally not subject to DOD survey and approval under §§ 861.4 and 861.5. However, DOD will periodically review the performance of such foreign carriers. This review may consist of recurring performance evaluations, periodic examination of the U.S.

code-sharing carrier's operational reviews and assessments of the foreign carrier and, where appropriate and agreed to by the air carriers concerned and DOD, on-site surveys of the foreign air carrier. Such carriers must also meet the 12 months prior experience requirement of §861.4(e)(1). The CARB or higher authority may prescribe additional review requirements. Should circumstances warrant, use of these air carriers by DOD passengers on official business may be restricted or prohibited as necessary to assure the highest levels of passenger safety.

(c) *Other foreign air carriers carrying individually ticketed DOD passengers on official business.* Foreign air carriers carrying individually ticketed DOD passengers on official business are not subject to DOD survey and approval under §§861.4 and 861.5. However, the DOD Air Carrier Survey and Analysis Division may periodically review the performance of such carriers. Reviews may include voluntary on-site surveys as directed by the CARB or higher authority. In the event questions relating to the safety and continued use of the carrier arise, the matter may be referred to the CARB for appropriate action.

(d) *Foreign air carriers from countries in which the CAA is not in compliance with ICAO standards.* Unless otherwise authorized, use by DOD personnel on official business of foreign air carriers from countries in which the CAA is not in compliance with ICAO standards is prohibited except for the last leg into and the first leg out of the U.S. on such carriers. This includes foreign air carriers performing any portion of a route awarded to a U.S. air carrier under the GSA City Pair Program pursuant to a code-sharing agreement with that U.S. air carrier.

(e) *On-site surveys.* The scope of the on-site survey of a foreign air carrier will be at the discretion of the CARB. In the event a foreign air carrier denies a request made under this part to conduct an on-site survey, the CARB will consider all available information and make a use/nonuse recommendation to DOD. If placed in nonuse status by DOD, such air carriers will not be used unless, in accordance with the reference in §861.1 (b), in the judgment of the appropriate Combatant Commander, no acceptable alternative to using the carrier exists and the travel is mission essential.

(f) *Foreign carriers providing operational support services to DOD.* Such carriers are subject to DOD oversight, on a case-by-case basis, to the extent directed by the CARB or higher authority.

§861.7 Disclosure of voluntarily provided safety-related information.

(a) *General.* In accordance with paragraph (h) of the reference in §861.1 (a), DOD may withhold from public disclosure safety-related information voluntarily provided to DOD by an air carrier for the purposes of this part if DOD determines that—

(1) The disclosure of the information would, in the future, inhibit an air carrier from voluntarily providing such information to DOD or another Federal agency for the purposes of this part or for other air safety purposes; and

(2) The receipt of such information generally enhances the fulfillment of responsibilities under this part or other air safety responsibilities involving DOD or another Federal agency.

(b) *Processing requests for disclosure of voluntarily provided safety-related information.* Requests for public disclosure will be administratively processed in accordance with 32 CFR part 806, Air Force Freedom of Information Act Program.

(c) *Disclosure of voluntarily provided safety-related information to other agencies.* The Department of Defense may, at its discretion, disclose voluntarily provided safety-related information submitted under this part by an air carrier, to other agencies with safety responsibilities. The DOD will provide such information to another agency only upon receipt of adequate assurances that it will protect the information from public disclosure, and that it will not release such information unless specifically authorized.

SUBCHAPTER G—ORGANIZATION AND MISSION—GENERAL

PART 865—PERSONNEL REVIEW BOARDS

Subpart A—Air Force Board for Correction of Military Records

Sec.
865.0 Purpose.
865.1 Setup of the Board.
865.2 Board responsibilities.
865.3 Application procedures.
865.4 Board actions.
865.5 Decision of the Secretary of the Air Force.
865.6 Reconsideration of applications.
856.7 Action after final decision.
865.8 Miscellaneous provisions.

Subpart B—Air Force Discharge Review Board

865.100 Purpose.
865.101 References.
865.102 Statutory authority.
865.103 Definition of terms.
865.104 Secretarial responsibilities.
865.105 Jurisdiction and authority.
865.106 Application for review.
865.107 DRB composition and meeting location.
865.108 Availability of records and documents.
865.109 Procedures for hearings.
865.110 Decision process.
865.111 Response to items submitted as issues by the applicant.
865.112 Decisional issues.
865.113 Recommendations by the Director of the Personnel Council and Secretarial Review Authority.
865.114 Decisional document.
865.115 Issuance of decisions following discharge review.
865.116 Records of DRB proceeding.
865.117 Final disposition of the record of proceedings.
865.118 Availability of Discharge Review Board documents for public inspection and copying.
865.119 Privacy Act information.
865.120 Discharge review standards.
865.121 Complaints concerning decisional documents and index entries.
865.122 Summary of statistics for Discharge Review Board.
865.123 Approval of exceptions to directive.
865.124 Procedures for regional hearings.
865.125 Report requirement.
865.126 Sample report format.

Subpart A—Air Force Board for Correction of Military Records

SOURCE: 75 FR 596132, Sept. 28, 2010, unless otherwise noted.

§ 865.0 Purpose.

This subpart sets up procedures for correction of military records to remedy error or injustice. It tells how to apply for correction of military records and how the Air Force Board for Correction of Military Records (AFBCMR, or the Board) considers applications. It defines the Board's authority to act on applications. It directs collecting and maintaining information subject to the Privacy Act of 1974 authorized by 10 U.S.C. 1034 and 1552. System of Records notice F035 SAFCB A, Military Records Processed by the Air Force Correction Board, applies.

§ 865.1 Setup of the Board.

The AFBCMR operates within the Office of the Secretary of the Air Force according to 10 U.S.C. 1552. The Board consists of civilians in the executive part of the Department of the Air Force who are appointed and serve at the pleasure of the Secretary of the Air Force. Three members constitute a quorum of the Board.

§ 865.2 Board responsibilities.

(a) *Considering applications*. The Board considers all individual applications properly brought before it. In appropriate cases, it directs correction of military records to remove an error or injustice, or recommends such correction.

(b) *Recommending action*. When an applicant alleges reprisal under the Military Whistleblowers Protection Act, 10 U.S.C. 1034, the Board may recommend to the Secretary of the Air Force that disciplinary or administrative action be taken against those responsible for the reprisal.

(c) *Deciding cases*. The Board normally decides cases on the evidence of the record. It is not an investigative body. However, the Board may, in its discretion, hold a hearing or call for

additional evidence or opinions in any case.

§ 865.3 Application procedures.

(a) Who may apply:

(1) In most cases, the applicant is a member or former member of the Air Force, since the request is personal to the applicant and relates to his or her military records.

(2) An applicant with a proper interest may request correction of another person's military records when that person is incapable of acting on his or her own behalf, is missing, or is deceased. Depending on the circumstances, a child, spouse, civilian employee or former civilian employee, former spouse, parent or other close relative, an heir, or a legal representative (such as a guardian or executor) of the member or former member may be able to show a proper interest. Applicants will send proof of proper interest with the application when requesting correction of another person's military records. An application may be returned when proper interest has not been shown.

(3) A member, former member, employee or former employee, dependent, and current or former spouse may apply to correct a document or other record of any other military matter that affects them (This does not include records pertaining to civilian employment matters). Applicants will send proof of the effect of the document or record upon them with the application when requesting a correction under this provision.

(b) *Getting forms*. Applicants may get a DD Form 149, "Application for Correction of Military Record Under the Provisions of Title 10 U.S.C. 1552," and Air Force Pamphlet 36–2607, "*Applicants' Guide to the Air Force Board for Correction of Military Records (AFBCMR)*," from:

(1) Any Air Force Military Personnel Flight (MPF) or publications distribution office.

(2) Most veterans' service organizations.

(3) The Air Force Review Boards Office, SAF/MRBR, 550 C Street West, Suite 40, Randolph AFB TX 78150–4742.

(4) The AFBCMR, 1535 Command Drive, EE Wing 3rd Floor, Andrews AFB MD 20762–7002.

(5) Thru the Internet at *http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd0149.pdf* (DD Form 149) and *http://www.e-publishing.af.mil/shared/media/epubs/AFPAM36–2607.pdf* (Air Force Pamphlet 36–2607).

(c) *Preparation*. Before applying, applicants should:

(1) Review Air Force Pamphlet 36–2607.

(2) Discuss their concerns with MPF, finance office, or other appropriate officials. Errors can often be corrected administratively without resort to the Board.

(3) Exhaust other available administrative remedies (otherwise the Board may return the request without considering it).

(d) *Submitting the application*. Applicants should complete all applicable sections of the DD Form 149, including at least:

(1) The name under which the member served.

(2) The member's social security number or Air Force service number.

(3) The applicant's current mailing address.

(4) The specific records correction being requested.

(5) Proof of proper interest if requesting correction of another person's records.

(6) The applicant's original signature.

(e) Applicants should mail the original signed DD Form 149 and any supporting documents to the Air Force address on the back of the form.

(f) *Meeting time limits*. Ordinarily, applicants must file an application within 3 years after the error or injustice was discovered, or, with due diligence, should have been discovered. In accordance with federal law, time on active duty is not included in the 3 year period. An application filed later is untimely and may be denied by the Board on that basis.

(1) The Board may excuse untimely filing in the interest of justice.

(2) If the application is filed late, applicants should explain why it would be in the interest of justice for the Board to waive the time limits.

(g) *Stay of other proceedings.* Applying to the AFBCMR does not stay other proceedings.

(h) *Counsel representation.* Applicants may be represented by counsel, at their own expense.

(1) The term "counsel" includes members in good standing of the bar of any state, accredited representatives of veterans' organizations recognized under by the Secretary of Veterans Affairs pursuant to 38 U.S.C. 5902(a)(1), and other persons determined by the Executive Director of the Board to be competent to represent the interests of the applicant.

(2) See DoDD 7050.06, *Military Whistleblower Protection*[1] *and* AFI 90–301, *Inspector General Complaints Resolution,* for special provisions for counsel in cases processed under 10 U.S.C. 1034.

(i) *Page limitations on briefs.* Briefs in support of applications:

(1) May not exceed 25 double-spaced typewritten pages.

(2) Must be typed on one side of a page only with not more than 12 characters per inch.

(3) Must be assembled in a manner that permits easy reproduction.

(4) Responses to advisory opinions must not exceed 10 double-spaced typewritten pages and meet the other requirements for briefs.

(5) These limitations do not apply to supporting documentary evidence.

(6) In complex cases and upon request, the Executive Director of the Board may waive these limitations.

(j) *Withdrawing applications.* Applicants may withdraw an application at any time before the Board's decision. Withdrawal does not stay the 3-year time limit.

(k) *Authority to reject applications.* The Executive Director may return an application without action, if, after consultation with legal counsel, he or she determines that the application is clearly frivolous, or the remedy that is requested is beyond the authority of the Board. This authority may not be delegated.

[1] Available via the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/705006p.pdf.*

§ 865.4 Board actions.

(a) *Board information sources.* The applicant has the burden of providing sufficient evidence of material error or injustice. However, the Board:

(1) May get additional information and advisory opinions on an application from any Air Force organization or official.

(2) May ask the applicant to furnish additional information regarding matters before the Board.

(b) Applicants will be given an opportunity to review and comment on advisory opinions and additional information obtained by the Board. They will also be provided with a copy of correspondence to or from the Air Force Review Boards Agency with an entity outside the Air Force Review Boards Agency in accordance with the provisions of 10 U.S.C. 1556.

(c) *Consideration by the Board.* A panel consisting of at least three board members considers each application. One panel member serves as its chair. The panel's actions and decisions constitute the actions and decisions of the Board.

(d) The panel may decide the case in executive session or authorize a hearing. When a hearing is authorized, the procedures in § 865.4(f), of this part, apply.

(e) *Board deliberations.* Normally only members of the Board and Board staff will be present during deliberations. The panel chair may permit observers for training purposes or otherwise in furtherance of the functions of the Board.

(f) *Board hearings.* The Board in its sole discretion determines whether to grant a hearing. Applicants do not have a right to a hearing before the Board.

(1) The Executive Director will notify the applicant or counsel, if any, of the time and place of the hearing. Written notice will be mailed 30 days in advance of the hearing unless the notice period is waived by the applicant. The applicant will respond not later than 15 days before the hearing date, accepting or declining the offer of a hearing and, if accepting, provide information pertaining to counsel and witnesses. The Board will decide the case in executive

session if the applicant declines the hearing or fails to appear.

(2) When granted a hearing, the applicant may appear before the Board with or without counsel and may present witnesses. It is the applicant's responsibility to notify witnesses, arrange for their attendance at the hearing, and pay any associated costs.

(3) The panel chair conducts the hearing, maintains order, and ensures the applicant receives a full and fair opportunity to be heard. Formal rules of evidence do not apply, but the panel observes reasonable bounds of competency, relevancy, and materiality. Witnesses other than the applicant will not be present except when testifying. Witnesses will testify under oath or affirmation. A recorder will record the proceedings verbatim. The chair will normally limit hearings to 2 hours but may allow more time if necessary to ensure a full and fair hearing.

(4) Additional provisions apply to cases processed under 10 U.S.C. 1034. See DoDD 7050.06, *Military Whistleblower Protection*[2], and AFI 90–301, *Inspector General Complaints Resolution*.

(g) The Board will not deny or recommend denial of an application on the sole ground that the issue already has been decided by the Secretary of the Air Force or the President of the United States in another proceeding.

(h) *Board decisions*. The panel's majority vote constitutes the action of the Board. The Board will make determinations on the following issues in writing:

(1) Whether the provisions of the Military Whistleblowers Protection Act apply to the application. This determination is needed only when the applicant invokes the protection of the Act, or when the question of its applicability is otherwise raised by the evidence.

(2) Whether the application was timely filed and, if not, whether the applicant has demonstrated that it would be in the interest of justice to excuse the untimely filing. When the Board determines that an application is not timely, and does not excuse its untimeliness, the application will be denied on that basis.

(3) Whether the applicant has exhausted all available and effective administrative remedies. If the applicant has not, the application will be denied on that basis.

(4) Whether the applicant has demonstrated the existence of a material error or injustice that can be remedied effectively through correction of the applicant's military record and, if so, what corrections are needed to provide full and effective relief.

(5) In Military Whistleblowers Protection Act cases only, whether to recommend to the Secretary of the Air Force that disciplinary or administrative action be taken against any Air Force official whom the Board finds to have committed an act of reprisal against the applicant. Any determination on this issue will not be made a part of the Board's record of proceedings and will not be given to the applicant, but will be provided directly to the Secretary of the Air Force under separate cover (Sec 865.2b, of this part).

(i) *Record of proceedings*. The Board staff will prepare a record of proceedings following deliberations which will include:

(1) The name and vote of each Board member.

(2) The application.

(3) Briefs and written arguments.

(4) Documentary evidence.

(5) A hearing transcript if a hearing was held.

(6) Advisory opinions and the applicant's related comments.

(7) The findings, conclusions, and recommendations of the Board.

(8) Minority reports, if any.

(9) Other information necessary to show a true and complete history of the proceedings.

(j) *Minority reports*. A dissenting panel member may prepare a minority report which may address any aspect of the case.

(k) *Separate communications*. The Board may send comments or recommendations to the Secretary of the Air Force as to administrative or disciplinary action against individuals found to have committed acts of reprisal prohibited by the Military Whistleblowers Protection Act and on other

[2] Copies may be obtained via the Internet at *http://www.dtic.mil/whs/directives/corres/pdf/705006p.pdf*.

matters arising from an application not directly related to the requested correction of military records. Such comments and recommendations will be separately communicated and will not be included in the record of proceedings or given to the applicant or counsel.

(l) *Final action by the Board.* The Board acts for the Secretary of the Air Force and its decision is final when it:

(1) Denies any application (except under 10 U.S.C. 1034).

(2) Grants any application in whole or part when the relief was recommended by the official preparing the advisory opinion, was unanimously agreed to by the panel, and does not affect an appointment or promotion requiring confirmation by the Senate, and does not affect a matter for which the Secretary of the Air Force or his or her delegee has withheld decision authority or required notification before final decision.

(3) The Board sends the record of proceedings on all other applications to the Secretary of the Air Force or his or her designee for final decision.

(m) The Board may identify DoD or Air Force policies, instructions, guidance or practices that are leading to, or likely to lead to unsound business decisions, unfair results, waste of government funds or public criticism. The Board will forward such observations directly to the appropriate offices of the Secretariat and/or Air Staff for review and evaluation. Such observations will not be included in the record of proceedings.

§ 865.5 Decision of the Secretary of the Air Force.

(a) The Secretary may direct such action as he or she deems appropriate on each case, including returning the case to the Board for further consideration. Cases returned to the Board for further reconsideration will be accompanied by a brief statement of the reasons for such action. If the Secretary does not accept the Board's recommendation, the Secretary's decision will be in writing and will include a brief statement of the grounds for his/her final decision.

(b) *Decisions in cases under the Military Whistleblowers Protection Act.* The Secretary will issue decisions on such cases within 180 days after receipt of the case and will, unless the full relief requested is granted, inform applicants of their right to request review of the decision by the Secretary of Defense (SecDef). Applicants will also be informed:

(1) Of the name and address of the official to whom the request for review must be submitted.

(2) That the request for review must be submitted within 90 days after receipt of the decision by the Secretary of the Air Force.

(3) That the request for review must be in writing and include the applicant's name, address, and telephone number; a copy of the application to the AFBCMR and the final decision of the Secretary of the Air Force; and a statement of the specific reasons the applicant is not satisfied with the decision of the Secretary of the Air Force.

(4) That the request must be based on the Board record; requests for review based on factual allegations or evidence not previously presented to the Board will not be considered under this paragraph but may be the basis for reconsideration by the Board under § 865.6.

(c) In cases under § 865.5(b) of this part which involve additional issues not cognizable under that paragraph, the additional issues may be considered separately by the Board under § 865.3 and § 865.4 of this part. The special time limit in § 865.5 (b) does not apply to the decision concerning these additional issues.

(d) *Decisions in high profile or sensitive cases.* Prior to taking final action on a BCMR application that has generated, or is likely to generate, significant public or Congressional interest, the Secretarial designee will provide the case record of proceedings through Secretarial channels to OSAF so that the Secretary can determine whether to decide the case personally or take other action the Secretary deems appropriate.

§ 865.6 Reconsideration of applications.

(a) The Board may reconsider an application if the applicant submits newly discovered relevant evidence

that was not reasonably available when the application was previously considered. The Executive Director or Team Chiefs will screen each request for reconsideration to determine whether it contains new evidence. New arguments about, or analysis of, evidence already considered, and additional statements which are cumulative to those already in the record of proceedings will not be considered new evidence.

(b) If the request contains new evidence, the Executive Director or his/her designee will refer it to a panel of the Board for a decision. The Board will decide the relevance and weight of any new evidence, whether it was reasonably available to the applicant when the application was previously considered, and whether it was submitted in a timely manner. The Board may deny reconsideration if the request does not meet the criteria for reconsideration. Otherwise the Board will reconsider the application and decide the case either on timeliness or merit as appropriate.

(c) If the request does not contain new evidence, the Executive Director or his/her designee will return it to the applicant without referral to the Board.

§ 856.7 Action after final decision.

(a) *Action by the Executive Director*. The Executive Director or his/her designee will inform the applicant or counsel, if any, of the final decision on the application. If any requested relief was denied, the Executive Director will advise the applicant of reconsideration procedures and, for cases processed under the Military Whistleblowers Protection Act, review by the SecDef. The Executive Director will send decisions requiring corrective action to the Chief of Staff, U.S. Air Force, for necessary action.

(b) *Settlement of claims*. The Air Force is authorized, under 10 U.S.C. 1552, to pay claims for amounts due to applicants as a result of correction of military records.

(1) The Executive Director will furnish the Defense Finance and Accounting Service (DFAS) with AFBCMR decisions potentially affecting monetary entitlement or benefits. DFAS will treat such decisions as claims for payment by or on behalf of the applicant.

(2) DFAS settles claims on the basis of the corrected military record. Computation of the amount due, if any, is a function of DFAS. Applicants may be required to furnish additional information to DFAS to establish their status as proper parties to the claim and to aid in deciding amounts due.

(3) Earnings received from civilian employment during any period for which active duty pay and allowances are payable will be deducted from the settlement. Amounts found due will be offset by the amount of any existing indebtedness to the government in compliance with the Debt Collection Act of 1982 or successor statutes.

(c) *Public access to decisions*. After deletion of personal information, AFBCMR decisions will be made available for review and copying at an electronic public reading room.

§ 865.8 Miscellaneous provisions.

(a) At the request of the Board, all Air Force activities and officials will furnish the Board with:

(1) All available military records pertinent to an application.

(2) An advisory opinion concerning an application. The advisory opinion will include an analysis of the facts of the case and of the applicant's contentions, a statement of whether or not the requested relief can be done administratively, and a recommendation on the timeliness and merit of the request. Regardless of the recommendation, the advisory opinion will include instructions on specific corrective action to be taken if the Board grants the application.

(b) *Access to records*. Applicants will have access to all records considered by the Board, except those classified or privileged. To the extent practicable, applicants will be provided unclassified or nonprivileged summaries or extracts of such records considered by the Board.

(c) *Payment of expenses*. The Air Force has no authority to pay expenses of any kind incurred by or on behalf of an applicant in connection with a correction of military records under 10 U.S.C. 1034 or 1552.

(d) *Form adopted:* DD Form 149.

Subpart B—Air Force Discharge Review Board

AUTHORITY: Sec. 8012, 70A Stat. 488; sec. 1553, 72 Stat. 1267, 10 U.S.C. 8012, 1553.

SOURCE: 48 FR 37384, Aug. 18, 1983, unless otherwise noted.

§ 865.100 Purpose.

This subpart establishes policies for the review of discharges and dismissals under 32 CFR part 70, "Discharge Review Boards Procedures and Standards," 47 FR 37770, August 26, 1982. 1982, and explains the jurisdiction, authority, and actions of the Air Force Discharge Review Board. It applies to all Air Force activities. This subpart is affected by the Privacy Act of 1974. The system of records cited in this subpart is authorized by 10 U.S.C. 1553 and 8012. Each data gathering form or format which is required by this subpart contains a Privacy Act Statement, either incorporated in the body of the document or in a separate statement accompanying each such document.

§ 865.101 References.

(a) Title 10 U.S.C., section 1553.

(b) Title 38 U.S.C., sections 101 and 3103, as amended by Pub. L. 95–126, October 8, 1977.

(c) DOD Directive 5000.19, "Policies for the Management and Control of Information Requirements," March 12, 1976.

(d) DOD Directive 5000.11, "Data Elements and Data Codes Standardization Program," December 7, 1964.

(e) DOD Directive 5000.12–M "DOD Manual for Standard Data Elements," December 1981.

(f) DOD Directive 1332.14, "Enlisted Administrative Separations," January 28, 1982.

(g) DOD Directive 5400.7, "DOD Freedom of Information Act Program," March 24, 1980; title 5 U.S.C., section 552.

(h) DOD Directive 5400.11, "Department of Defense Privacy Program," June 9, 1982; title 5 U.S.C., section 552a.

(i) Title 10 U.S.C., chapter 47, Uniform Code of Military Justice.

(j) Wood v. Secretary of Defense, Civ. No. 77–0684 (D.D.C.) (Order, December 3, 1981).

(k) Urban Law Institute of Antioch College, Inc. v. Secretary of Defense, Civ. No. 76–0530, (D.D.C.) (Stipulation of Dismissal, January 31, 1977) (Order and Settlement Agreement, July 30, 1982).

(l) Air Force Regulation 35–41, Vol III, Separation Procedures for USAFR Members, dated October 30, 1975.

(m) Air Force Regulation 36–2, Officer Personnel, Administrative Discharge Procedures, August 2, 1976.

(n) Air Force Regulation 36–3, Officer Personnel, Administrative Discharge Procedures, August 2, 1976.

(o) Air Force Regulation 36–12, Officer Personnel, Administrative Separation of Commissioned Officers and Warrant Officers, July 15, 1977.

(p) Air Force Regulation 39–10, Separation Upon Expiration of Term of Service, for Convenience of Government, Minority, Dependency and Hardship, January 3, 1977.

(q) Air Force Manual 39–12, Separation for Unsuitability, Misconduct, Resignation, or Request for Discharge for the Good of the Service and Procedures for the Rehabilitation Program, September 1, 1966.

(r) Air National Guard Regulation 39–10, Enlisted Personnel-Separation, December 30, 1971.

§ 865.102 Statutory authority.

The Air Force Discharge Review Board (DRB) was established within the Department of the Air Force under section 301 of the Serviceman's Readjustment Act of 1944, as amended (now 10 U.S.C. 1553) and further amended by Pub. L. 95–126 dated October 8, 1977.

§ 865.103 Definition of terms.

(a) *Applicant*. A former member of the Armed Forces who has been dismissed or discharged administratively in accordance with Military Department regulations or by sentence of a court-martial (other than a general court-martial) and under statutory regulatory provisions whose application is accepted by the DRB concerned or whose case is heard on the DRB's own motion. If the former member is deceased or incompetent, the term "applicant" includes the surviving spouse, next-of-kin, or legal representative who is acting on behalf of the former

member. When the term "applicant" is used in this subpart, it includes the applicant's counsel or representative, except that the counsel or representative may not submit an application for review, waive the applicant's right to be present at a hearing, or terminate a review without providing the DRB an appropriate power of attorney or other written consent of the former member.

(b) *Complainant*. A former member of the Armed Forces (or the former member's counsel) who submits a complaint in accordance with § 865.121 of this subpart with respect to the decisional document issued in the former member's own case; or a former member of the Armed Forces (or the former member's counsel) who submits a complaint stating that correction of the decisional document will assist the former member in preparing for an administrative or judicial proceeding in which the former member's own discharge will be at issue.

(c) *Counsel or representative*. An individual or agency designated by the applicant who agrees to represent the applicant in a case before the DRB. It includes, but is not limited to: a lawyer who is a member of the bar of a federal court or of the highest court of a state; an accredited representative designated by an organization recognized by the Administrator of Veterans Affairs; a representative from a state agency concerned with veterans affairs; and representatives from private organizations or local government agencies.

(d) *Discharge*. A general term used in this subpart that includes dismissal and separation or release from active or inactive military status, and actions that accomplish a complete severance of all military status. This term also includes the assignment of a reason for such discharge and characterization of service.

(e) *Discharge review*. The process by which the reason for separation, the procedures followed in accomplishing separation, and characterization of service are evaluated. This includes determinations made under the provisions of title 38 U.S.C. 3103(e)(2).

(f) *Discharge Review Board (DRB)*. An administrative board constituted by the Secretary of the Air Force and vested with discretionary authority to review discharges and dismissals under the provisions of title 10 U.S.C. 1553.

(g) *Regional Discharge Review Board*. A DRB that conducts discharge reviews in a location outside the National Capital Region (NCR).

(h) *DRB President*. The senior line officer of any DRB convened for the purpose of conducting discharge reviews.

(i) *Hearing*. A review involving an appearance before the DRB by the applicant or on the applicant's behalf by a counsel or representative.

(j) *Record review*. A review of the application, available service records, and additional documents (if any) submitted by the applicant.

(k) *National Capital Region (NCR)*. The District of Columbia; Prince Georges and Montgomery Counties in Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties in Virginia; and all cities and towns included within the outer boundaries of the foregoing counties.

(l) *Director, Air Force Personnel Council*. The person designated by the Secretary of the Air Force who is responsible for the supervision of the Discharge Review function.

§ 865.104 Secretarial responsibilities.

The Secretary of the Air Force is responsible for the overall operation of the Discharge Review program within the Department of the Air Force. The following delegation of authority have been made:

(a) To the Office of the Assistant Secretary of the Air Force (Manpower, Reserve Affairs and Installations) to act for the Secretary of the Air Force in all discharge review actions subject to review by the Secretary as specified in § 865.113 of this subpart.

(b) To the Director, Air Force Personnel Council, for operation of all phases of the discharge review function and authority to take action in the name of the Secretary of the Air Force in all discharge review actions except those specified in § 865.113 of this subpart.

§ 865.105 Jurisdiction and authority.

The DRB has jurisdiction and authority in cases of former military personnel who, at the time of their separation from the Service, were members of the US Army Aviation components (Aviation Section, Signal Corps; Air Service; Air Corps; or Air Forces) prior to September 17, 1947, or the US Air Force. The DRB does not have jurisdiction and authority concerning personnel of other armed services who at the time of their separation, were assigned to duty with the Army Air Forces or the US Air Force.

(a) The DRB's review is based on the former member's available military records, issues submitted by the former member, or his counsel and on any other evidence that is presented to the DRB. The DRB determines whether the type of discharge or dismissal the former member received is equitable and proper; if not, the DRB instructs the USAF Manpower and Personnel Center (AFMPC) to change the discharge reason or to issue a new character of discharge according to the DRB's findings.

(b) The DRB is not authorized to revoke any discharge, to reinstate any person who has been separated from the military service, or to recall any person to active duty.

(c) The DRB, on its own motion, may review a case that appears likely to result in a decision favorable to the former military member, without the member's knowledge or presence. In this case, if the decision is:

(1) Favorable, the DRB directs AFMPC to notify the former member accordingly at the member's last known address.

(2) Unfavorable, the DRB returns the case to the files without any record of formal action; the DRB then reconsiders the case without prejudice in accordance with normal procedures.

§ 865.106 Application for review.

(a) *General.* Applications shall be submitted to the Air Force DRB on DD Form 293, Application for Review of Discharge or Dismissal from the Armed Forces of the United States (OMB Approval No. 0704–0004) with such other statements, affidavits, or documentation as desired. It is to the applicant's advantage to submit such documents with the application or within 60 days thereafter in order to permit a thorough screening of the case. The DD Form 293 is available at most DOD installations and regional offices of the Veterans Administration, or by writing to: DA Military Review Boards Agency, Attention: SFBA (Reading Room), Room 1E520, The Pentagon, Washington, DC 20310.

(b) *Timing.* A motion or request for review must be made within 15 years after the date of discharge or dismissal.

(c) *Applicant's responsibilities.* An applicant may request a change in the character of or reason for discharge (or both).

(1) *Character of discharge.* DD Form 293 provides an applicant an opportunity to request a specific change in character of discharge (for example, General Discharge to Honorable Discharge; Under Other Than Honorable Conditions Discharge to General or Honorable Discharge). Only a person separated on or after 1 October 1982 while in an entry level status may request a change from other than an honorable discharge to Entry Level Separation. A request for review from an applicant who does not have an Honorable Discharge will be treated as a request for a change to an Honorable Discharge unless the applicant requests a specific change to another character of discharge.

(2) *Reason for discharge.* DD Form 293 provides an applicant an opportunity to request a specific change in the reason for discharge. If an applicant does not request a specific change in the reason for discharge, the DRB will presume that the request for review does not involve a request for change in the reason for discharge. Under its responsibility to examine the propriety and equity of an applicant's discharge, the DRB will change the reason for discharge if such a change is warranted.

(3) The applicant must ensure that issues submitted to the DRB are consistent with the request for change in discharge set forth in "Board Action Requested" of the DD Form 293. If an ambiguity is created by a difference between an applicant's issue and the requested action, the DRB will respond

to the issue in the context of the action requested in "Board Action Requested." In the case of a Personal Appearance hearing, the DRB will attempt to resolve the ambiguity.

(d) If the member is deceased or mentally incompetent, the spouse, next-of-kin, or legal representative may, as agent for the member, submit the application for the review along with proof of the member's death or mental incompetency.

(e) Applicants forward their requests for review to the USAF Manpower and Personnel Center-mailing address: AFMPC/MPCDOA1, Randolph AFB TX 78150. AFMPC will obtain all available military records of the former members from the National Personnel Records Center.

(f) *Withdrawal of application*. An applicant shall be permitted to withdraw an application without prejudice at any time before the scheduled review.

(g) *Submission of issues on DD Form 293*. Issues must be provided to the DRB on DD Form 293 before the DRB closes the review process for deliberation and should be submitted in accordance with the guidelines of this subpart for submission of issues.

(1) *Issues must be clear and specific*. An issue must be stated clearly and specifically in order to enable the DRB to understand the nature of the issue and its relationship to the applicant's discharge.

(2) *Separate listing of issues*. Each issue submitted by an applicant should be listed separately. Submission of a separate statement for each issue provides the best means of ensuring that the full import of the issue is conveyed to the DRB.

(3) *Use of DD Form 293*. DD Form 293 provides applicants with a standard format for submitting issues to the DRB, and its use:

(i) Provides a means for an applicant to set forth clearly and specifically those matters that, in the opinion of the applicant, provide a basis for changing the discharge;

(ii) Assists the DRB in focusing on those matters considered to be important by an applicant;

(iii) Assists the DRB in distinguishing between a matter submitted by an applicant in the expectation that it will be treated as a decisional issue under § 865.112, and those matters submitted simply as background or supporting materials;

(iv) Provides the applicant with greater rights in the event that the applicant later submits a complaint under § 865.121 of this subpart concerning the decisional document.

(v) Reduces the potential for disagreement as to the content of an applicant's issue.

(4) *Incorporation by reference*. If the applicant makes an additional written submission, such as a brief, in support of the application, the applicant may incorporate by reference specific issues set forth in the written submission in accordance with the guidance on DD Form 293. The reference shall be specific enough for the DRB to identify clearly the matter being submitted as an issue. At a minimum, it shall identify the page, paragraph, and sentence incorporated. Because it is to the applicant's benefit to bring such issues to the DRB's attention as early as possible in the review, applicants who submit a brief are strongly urged to set forth all issues as a separate item at the beginning of the brief. If it reasonably appears that the applicant inadvertently has failed expressly to incorporate an issue which the applicant clearly identifies as an issue to be addressed by the DRB, the DRB shall respond to such an issue in accordance with §§ 865.111 and 865.112 of this subpart.

(5) *Effective date of the new DD Form 293*. With respect to applications received before November 27, 1982, the DRB shall consider issues clearly and specifically stated in accordance with the rules in effect at the time of submission. With respect to applications received on or after November 27, 1982, if the applicant submits an obsolete DD Form 293, the application will be returned with a copy of the revised DD Form 293 for reaccomplishment. The DRB will only respond to the issues submitted on the new form in accordance with 32 CFR part 70, 47 FR 37770, August 26, 1982 and this subpart.

(h) *Relationship of issues to character of or reason for discharge*. If the application applies to both character of and reason for discharge, the applicant is

encouraged, but not required, to identify the issue as applying to the character of or reason for discharge (or both). Unless the issue is directed at the reason for discharge expressly or by necessary implication, the DRB will presume that it applies solely to the character of discharge.

(i) *Relationship of issues to the standards for discharge review.* The DRB reviews discharges on the basis of issues of propriety and equity. The standards used by the DRB are set forth in § 865.120 of this subpart. The applicant is encouraged to review those standards before submitting any issue upon which the applicant believes a change in discharge should be based. The applicant is also encouraged, but not required, to identify an issue as pertaining to the propriety or the equity of the discharge. This will assist the DRB in assessing the relationship of the issue to propriety or equity under § 865.112(d) of this subpart.

(j) *Citation of matter from decisions.* The primary function of the DRB involves the exercise of discretion on a case-by-case basis. Applicants are not required to cite prior decisions as the basis for a change in discharge. If the applicant wishes to bring the DRB's attention to a prior decision as background or illustrative material, the citation should be placed in a brief or other supporting documents. If, however, it is the applicant's intention to submit an issue that sets forth specific principles and facts from a specific cited decision, the following requirements apply with respect to applications received on or after November 27, 1982.

(1) The issue must be set forth or expressly incorporated in the "Applicant's Issue" portion of DD Form 293.

(2) If an applicant's issue cites a prior decision (of the DRB, another Board, an agency, or a court), the applicant shall describe the specific principles and facts that are contained in the prior decision and explain the relevance of cited matter to the applicant's case.

(3) To insure timely consideration of principles cited from unpublished opinions (including decisions maintained by the Armed Forces Discharge Review Board/Correction Board Reading Room), the applicant must provide the DRB with copies of such decisions or of the relevant portion of treatise, manual, or similar source in which the principles were discussed. At the applicant's request, such materials will be returned.

(4) If the applicant fails to comply with the requirements above, the decisional document shall note the defect, and shall respond to the issue without regard to the citation.

(k) *Identification by the DRB of issues submitted by an applicant.* The applicant's issues shall be identified in accordance with this section after a review of all materials and information is made.

(1) *Issues on DD Form 293.* The DRB shall consider all items submitted as issues by an applicant on DD Form 293 (or incorporated therein) in accordance with this part. With respect to applications submitted before November 27, 1982, the DRB shall consider all issues clearly and specifically stated in accordance with the rules in effect at the time of the submission.

(2) *Amendment of issues.* The DRB shall not request or instruct an applicant to amend or withdraw any matter submitted by the applicant. Any amendment or withdrawal of an issue by an applicant shall be confirmed in writing by the applicant. This provision does not:

(i) Limit by DRB's authority to question an applicant as to the meaning of such matter;

(ii) Preclude the DRB from developing decisional issues based upon such questions:

(iii) Prevent the applicant from amending or withdrawing such matter any time before the DRB closes the review process for deliberation; or

(iv) Prevent the DRB from presenting an applicant with a list of proposed decisional issues and written information concerning the right of the applicant to add to, amend, or withdraw the applicant's submission. The written information will state that the applicant's decision to take such action (or decline to do so) will not be used against the applicant in the consideration of the case.

(3) Additional Issues Identified During a Hearing. The following additional

procedure shall be used during a hearing in order to promote the DRB's understanding of an applicant's presentation. If before closing the hearing for deliberation, the DRB believes that an applicant has presented an issue not listed on DD Form 293, the FRB may so inform the applicant, and the applicant may submit the issue in writing or add additional written issues at that time. This does not preclude the DRB from developing its own decisional issues.

(l) *Notification of possible bar to benefits.* Written notification shall be made to each applicant whose record indicates a reason for discharge that bars receipt of benefits under 38 U.S.C. 3103(a). This notification will advise the applicant that separate action by the Board for Correction of Military Records or the Veterans Administration may confer eligibility for VA benefits. Regarding the bar to benefits based upon the 180 days consecutive unauthorized absence, the following applies:

(1) Such absence must have been included as part of the basis for the applicant's discharge under other than honorable conditions.

(2) Such absence is computed without regard to the applicant's normal or adjusted expiration of term of service.

§ 865.107 DRB composition and meeting location.

(a) The DRB consists of five members, with the senior line officer acting as the presiding officer. The presiding officer convenes, recesses and adjourns the Board.

(b) In addition to holding hearings in Washington, DC, the DRB, as a convenience to applicants, periodically conducts hearings at selected locations throughout the Continental United States. Reviews are conducted at locations central to those areas with the greatest number of applicants. A continuing review and appraisal is conducted to ensure the selected hearing locations are responsive to a majority of applicants. Administrative details and responsibilities for Regional Boards are outlined in § 865.124.

§ 865.108 Availability of records and documents.

(a) Before applying for discharge review, potential applicants or their designated resentatives may, and are encouraged to obtain copies of their military personnel records by submitting a General Services Administration Standard Form 180, Request Pertaining to Military Records, to the National Personnel Records Center (NPRC) 9700 Page Boulevard, St. Louis, Mo 63132; thus avoiding any lengthy delays in the processing of the application (DD Form 293) and the scheduling of reviews.

(1) Once the application for discharge review (DD Form 293) is submitted, an applicant's military records are forwarded to the DRB where they cannot be reproduced. Submission of a request for an applicant's military records, including a request under the Freedom of Information Act or Privacy Act after the DD Form 293 has been submitted, shall result automatically in the termporary suspension of processing of the application for discharge review until the requested records are sent to an appropriate location for copying, are copied, and returned to the headquarters of the DRB. Processing of the application shall then be resumed at whatever stage of the discharge review process is practicable.

(2) Applicants and their designated representatives also may examine their military personnel records at the site of their scheduled review before the hearing. The DRB shall notify applicants and their designated representatives of the dates the records are available for examination in their standard scheduling information.

(b) The DRB is not authorized to provide copies of documents that are under the cognizance of another government department, office, or activity. Applications for such information must be made by the applicant to the cognizant authority. The DRB shall advise the applicant of the mailing address of the government department, office, or activity to which the request should be submitted.

(c) If the official records relevant to the discharge review are not available at the agency having custody of the

records, the applicant shall be so notified and requested to provide such information and documents as may be desired in support of the request for discharge review. A period of not less than 30 days shall be allowed for such documents to be submitted. At the expiration of this period, the review may be conducted with information available to the DRB.

(d) The DRB may take steps to obtain additional evidence that is relevant to the discharge under consideration beyond that found in the official military records or submitted by the applicant, if a review of available evidence suggests that it would be incomplete without the additional information, or when the applicant presents testimony or documents that require additional information to evaluate properly. Such information shall be made available to the applicant, upon request, with appropriate modifications regarding classified material.

(1) In any case heard on the request of an applicant, the DRB shall provide the applicant and counsel or representative, if any, at a reasonable time before initiating the decision process, a notice of the availability of all regulations and documents to be considered in the discharge review, except for documents in the official personnel or medical records and any documents submitted by the applicant. The DRB shall also notify the applicant or counsel or representative (i) of the right to examine such documents or to be provided with copies of documents upon request; (ii) of the date by which such request must be received; and (iii) of the opportunity to respond within a reasonable period of time to be set be the DRB.

(2) When necessary to acquaint the applicant with the substance of a classified document, the classifying authority, on the request of the DRB, shall prepare a summary of or an extract from the document, deleting all reference to source of information and other matters, the disclosure of which, in the opinion of the classifying authority, would be detrimental to the national security interest of the United States. Should preparation of such summary be deemed impracticable by the classifying authority, information from the classified source shall not be considered by the DRB in its review of the case.

(e) Current Air Force numbered publications may be obtained from the Chief, Central Base Administration at any major Air Force installation or by writing:

HQ USAF/DASJL, Washington, DC 20330

or

DA Military Review Boards Agency, Attention: SPBA (Reading Room), Room 1E520, Washington, DC 20310

§ 865.109 Procedures for hearings.

(a) The applicant is entitled, by law, to appear in person at his or her request before the DRB in open session and to be represented by counsel of his or her own selection. The applicant also may present such witnesses as he or she may desire.

(b) There are two types of reviews. They are:

(1) *Record Review*. A review of the application, available service records, and additional documents (if any) submitted by the applicant.

(2) *Hearing*. A personal appearance before the DRB by the applicant with or without counsel, or by the counsel only.

(c) The Government does not compensate or pay the expenses of the applicant, applicant's witnesses, or counsel.

(d) A summary of the available military records of the applicant is prepared for use by the DRB in the review process. A copy of the summary is available to the applicant and/or his or her counsel, upon request.

(e) When an applicant has requested a personal appearance and/or representation by counsel on the DD Form 293, the DRB sends written notice of the hearing time and place to the applicant and designated counsel. Evidence of such notification will be placed in the applicant's record.

(f) Personal appearance hearings shall be conducted with recognition of the rights of the individual to privacy. Accordingly, presence at hearings of individuals other than those whose presence is required will be limited to persons authorized by the presiding officer and/or expressly requested by the

applicant, subject to reasonable limitations based upon available space.

(g) Formal rules of evidence shall not be applied in DRB proceedings. The presiding officer shall rule on matters of procedure and shall ensure that reasonable bounds of relevancy and materiality are maintained in the taking of evidence and presentation of witnesses. Applicants and witnesses may present evidence to the DRB panel either in person or by affidavit or through counsel. If an applicant or witness testifies under oath or affirmation, he or she is subject to questioning by Board members.

(h) There is a presumption of regularity in the conduct of governmental affairs. This presumption can be applied in any review unless there is substantial credible evidence to rebut the presumption.

(i) *Failure to appear at a hearing or respond to scheduling notice.* (1) Except as otherwise authorized by the Secretary of the Air Force, further opportunity for a personal appearance hearing shall not be made available in the following circumstances to an applicant who has requested a hearing.

(i) When the applicant and/or a designated counsel or representative has been sent a letter containing the date and location of a proposed hearing and fails to make a timely response; or

(ii) When the applicant and/or a designated representative, after being notified by letter of the time and place of the hearing, fails to appear at the appointed time, either in person or by representative, without having made a prior, timely request for a postponement or withdrawal.

(2) In such cases, the applicant shall be deemed to have waived his/her right to a hearing, and the DRB shall complete its review of the discharge. Further request for a hearing shall not be granted unless the applicant can demonstrate that the failure to appear or respond was due to circumstances beyond the applicant's control.

(j) *Continuance and postponements.* (1) A continuance of a discharge review hearing may be authorized by the presiding officer of the Board concerned, provided that such continuance is of a reasonable duration and is essential to achieving a full and fair hearing. Where a proposal for continuance is indefinite, the pending application shall be returned to the applicant with the option to resubmit when the case is fully ready for review.

(2) Postponements of scheduled reviews normally shall not be permitted other than for demonstrated good and sufficient reason set forth by the applicant in a timely manner, or for the convenience of the government.

(k) *Reconsideration.* A discharge review shall not be subject to reconsideration except:

(1) Where the only previous consideration of the case was on the motion of the DRB;

(2) When the original discharge review did not involve a personal appearance hearing and a personal appearance is now desired, and the provisions of § 865.109(j) do not apply;

(3) Where changes in discharge policy are announced subsequent to an earlier review of an applicant's discharge, and the new policy is made expressly retroactive;

(4) Where the DRB determines that policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a service-wide basis to discharges of the type under consideration, provided that such changes in policies or procedures represent a substantial enhancement of the rights afforded an applicant in such proceeding;

(5) Where an individual is to be represented by a counsel/representative, and was not so represented in any previous consideration of the case.

(6) Where the case was not previously considered under the uniform standards published pursuant to Pub. L. 95–126 and application is made for such consideration within 15 years after the date of discharge; or

(7) On the basis of presentation of new, substantial, relevant evidence not available to the applicant at the time of the original review. The decision as to whether evidence offered by an applicant in support of a request for reconsideration is in fact new, substantial, relevant, and was not available to the applicant at the time of the original review will be based on a comparison of such evidence with the evidence

considered in the previous discharge review. If this comparison shows that the evidence submitted would have had a probable effect on matters concerning the propriety or equity of the discharge, the request for reconsideration shall be granted.

§ 865.110 Decision process.

(a) The DRB shall meet in plenary session to review discharges and exercise its discretion on a case-by-case basis in applying the standards set forth in this regulation.

(b) The presiding officer is responsible for the conduct of the discharge review. The presiding officer shall convene, recess, and adjourn the DRB as appropriate, and shall maintain an atmosphere of dignity and decorum at all times.

(c) Each board member shall act under oath or affirmation requiring careful, objective consideration of the application. They shall consider all relevant material and competent information presented to them by the applicant. In addition, they shall consider all available military records, together with such other records as may be in the files and relevant to the issues before the DRB.

(d) The DRB shall identify and address issues after a review of the following material obtained and presented in accordance with this subpart and 32 CFR part 70: available official military records, documentary evidence submitted by or on behalf of the applicant, presentation of testimony by or on behalf of the applicant, oral or written arguments presented by or on behalf of the applicant, and any other relevant evidence.

(e) Application of Standards:

(1) When the DRB determines that an applicant's discharge was improper, the DRB will determine which reason for discharge should have been assigned based upon the facts and circumstances properly before the discharge authority in view of the regulations governing reasons for discharge at the time the applicant was discharged.

(2) When the board determines that an applicant's discharge was inequitable, any change will be based on the evaluation of the applicant's overall record of service and relevant regulations.

(f) Voting shall be conducted in closed session, a majority of the five members' votes constituting the DRB's decision.

(g) Details of closed session deliberations of a DRB are privileged information and shall not be divulged.

(h) A formal minority opinion may be submitted in instances of disagreement between members of a board. The opinion must cite findings, conclusions and reasons which are the basis for the opinion. The complete case with the majority and minority recommendations will be submitted to the Director, Air Force Personnel Council.

(i) The DRB may request advisory opinions from staff offices of the Air Force. These opinions are advisory in nature and are not binding on the DRB in its decision making process.

§ 865.111 Response to items submitted as issues by the applicant.

(a) If an issue submitted by an applicant contains two or more clearly separate issues, the DRB should respond to each issue under the guidance of this section as if it had been set forth separately by the applicant.

(b) If an applicant uses a "building block" approach (that is, setting forth a series of conclusions on issues that lead to a single conclusion purportedly warranting a change in the applicant's discharge), normally there should be a separate response to each issue.

(c) This section does not preclude the DRB from making a single response to multiple issues when such action would enhance the clarity of the decisional document, but such response must reflect an adequate response to each separate issue.

(d) An item submitted as an issue by an applicant in accordance with this regulation shall be addressed as a decisional issue under § 865.112 of this subpart in the following circumstances:

(1) When the DRB decides that a change in discharge should be granted, and the DRB bases its decision in whole or in part on the applicant's issue; or

(2) When the DRB does not provide the applicant with the full change in discharge requested, and the decision is

based in whole or in part on the DRB's disagreement with the merits of an issue submitted by the applicant.

(e) If the applicant receives the full change in discharge requested (or a more favorable change), that fact shall be noted and the basis shall be addressed as a decisional issue even if that basis is not addressed as an issue by the applicant. No further response is required to other issues submitted by the applicant.

(f) If the applicant does not receive the full change in discharge requested with respect to either the character of or reason for discharge (or both), the DRB shall address the items submitted by the applicant unless one of the following responses is applicable:

(1) *Duplicate issues.* The DRB may state that there is a full response to the issue submitted by the applicant under a specified decisional issue. This respose may be used only when one issue clearly duplicates another or the issue clearly requires discussion in conjunction with another issue.

(2) *Citations without principles and facts.* The DRB may state that any issue, which consists of a citation of a previous decision without setting forth any principles and facts from the decision that the applicant states are relevant to the applicant's case, does not comply with the requirements of § 865.106(g)(1) of this part.

(3) *Unclear issues.* The DRB may state that it cannot respond to an item submitted by the applicant as an issue because the meaning of the item is unclear. An issue is unclear if it cannot be understood by a reasonable person familiar with the discharge review process after a review of the materials considered under § 865.110(d) of this subpart.

(4) *Nonspecific issues.* The DRB may state that it cannot respond to an item submitted by the applicant as an issue because it is not specific. A submission is considered not specific if a reasonable person familiar with the discharge review process after a review of the materials considered under § 865.110(d), cannot determine the relationship between the applicant's submission and the particular circumstances of the case. This response may be used only if the submission is expressed in such general terms that no other response is applicable. For example, if the DRB disagrees with the applicant as to the relevance of matters set forth in the submission, the DRB normally will set forth the nature of the disagreement under the guidance in § 865.112 of this subpart with respect to decisional issues, or it will reject the applicant's position on the basis of § 865.111(f)(1) or § 865.111(f)(2). If the applicant's submission is so general that none of those provisions is applicable, then the DRB may state that it cannot respond because the item is not specific.

§ 865.112 Decisional issues.

(a) The decisional document shall discuss the issues that provide a basis for the decision whether there should be a change in the character of or reason for discharge. In order to enhance clarity, the DRB should not address matters other than issues relied upon in the decision or raised by the applicant.

(b) *Partial Change.* When the decision changes a discharge but does not provide the applicant with the full change in discharge requested, the decisional document shall address both the issues upon which change is granted and the issues upon which the DRB denies the full change requested.

(c) *Relationship of Issue to Character of or Reason for Discharge.* Generally, the decisional document should specify whether a decisional issue applies to the character of or reason for discharge (or both), but it is not required to do so.

(d) *Relationship of an Issue to Propriety or Equity.* (1) If an applicant identifies an issue as pertaining to both propriety and equity, the DRB will consider it under both standards.

(2) If an applicant identifies an issue as pertaining to the propriety of the discharge (for example, by citing a propriety standard or otherwise claiming that a change in discharge is required as a matter of law), the DRB shall consider the issue solely as a matter of propriety. Except as provided in § 865.112(d)(4), the DRB is not required to consider such an issue under the equity standards.

(3) If the applicant's issue contends that the DRB is required as a matter of

law to follow a prior decision by setting forth an issue of propriety from the prior decision and decribing its relationship to the applicant's case, the issue shall be considered under the propriety standards and addressed under § 865.112(e) or § 865.112(f).

(4) If the applicant's issue sets forth principles of equity contained in a prior DRB decision, describes the relationship to the applicant's case, and contends that the DRB is required as a matter of law to follow the prior case, the decisional document shall note that the DRB is not bound by its discretionary decisions in prior cases under the standards in § 865.120 of this subpart. However, the principles cited by the applicant, and the description of the relationship of the principles to the applicant's case, shall be considered under the equity standards and addressed under § 865.112(h) or § 865.112(i).

(5) If the applicant's issue cannot be identified as a matter of propriety or equity, the DRB shall address it as an issue of equity.

(e) *Change of discharge: Issues of propriety*. If a change in the discharge is warranted under the propriety standards the decisional document shall state that conclusion and list the errors or expressly retroactive changes in policy that provide a basis for the conclusion. The decisional document shall cite the facts in the record that demonstrate the relevance of the error or change in policy to the applicant's case. If the change in discharge does not constitute the full change requested by the applicant, the reasons for not granting the full change shall be addressed.

(f) *Denial of the full change requested: Issues of propriety*. If the decision rejects the applicant's position on an issue of propriety, or if it is otherwise decided on the basis of an issue of propriety that the full change in discharge requested by the applicant is not warranted, the decisional document shall note that conclusion. The decisional document shall list reasons for its conclusion on each issue of propriety under the following guidance:

(1) If a reason is based in whole or in part upon a part, statute, constitutional provision, judicial determination, or other source of law, the DRB shall cite the pertinent source of law and the facts in the record that demonstrate the relevance of the source of law to the particular circumstances in the case.

(2) If a reason is based in whole or in part on a determination as to the occurrence or nonoccurrence of an event or circumstance, including a factor required by applicable Air Force regulations to be considered for determination of the character of and reason for the applicant's discharge, the DRB shall make a finding of fact for each such event or circumstance.

(i) For each such finding, the decisional document shall list the specific source of the information relied upon. This may include the presumption of regularity in appropriate cases. If the information is listed in the service record section of the decisional document, a citation is not required.

(ii) If a finding of fact is made after consideration of contradictory evidence in the record (including information cited by the applicant or otherwise identified by members of the DRB), the decisional document shall set forth the conflicting evidence, and explain why the information relied upon was more persuasive than the information that was rejected. If the presumption of regularity is cited as the basis for rejecting such information, the decisional document shall explain why the contradictory evidence was insufficient to overcome the presumption. In an appropriate case, the explanation as to why the contradictory evidence was insufficient to overcome the presumption of regularity may consist of a statement that the applicant failed to provide sufficient corroborating evidence, or that the DRB did not find the applicant's testimony to be sufficiently credible to overcome the presumption.

(3) If the DRB disagrees with the position of the applicant on an issue of propriety, the following guidance applies in addition to the guidance in § 842.112(f) (1) and (2).

(i) The DRB may reject the applicant's position by explaining why it disagrees with the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant).

(ii) The DRB may reject the applicant's position by explaining why the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant) are not relevant to the applicant's case.

(iii) The DRB may reject an applicant's position by stating that the applicant's issue of propriety is not a matter upon which the DRB grants a change in discharge, and by providing an explanation for this position. When the applicant indicates that the issue is to be considered in conjunction with one or more other specified issues, the explanation will address all such specified issues.

(iv) The DRB may reject the applicant's position on the grounds that other specified factors in the case preclude granting relief, regardless of whether the DRB agreed with the applicant's position.

(v) If the applicant takes the position that the discharge must be changed because of an alleged error in a record associated with the discharge, and the record has not been corrected by the organization with primary responsibility for corrective action, respond that it will presume the validity of the record in the absence of such corrective action. If the organization empowered to correct the record is within the Department of the Air Force, the DRB should provide the applicant with a brief description of the procedures for requesting correction of the record. If the DRB on its own motion cites this issue as a decisional issue on the basis of equity, it shall address the issue as such.

(vi) When an applicant's issue contains a general allegation that a certain course of action violated his or her constitutional rights, respond in appropriate cases by noting that the action was consistent with statutory or regulatory authority, and by citing the presumption of constitutionality that attaches to statutes and regulations. If, on the other hand, the applicant makes a specific challenge to the constitutionality of the action by challenging the application of a statute or regulation is a particular set of circumstances, it is not sufficient to respond solely by citing the presumption of constitutionality of the statute or regulation when the applicant is not challenging the constitutionality of the statute or regulation. Instead, the response must address the specific circumstances of the case.

(g) *Denial of the full change in discharge requested when propriety is not at issue*. If the applicant has not submitted an issue of propriety and the DRB has not otherwise relied upon an issue of propriety to change the discharge, the decisional document shall contain a statement to that effect. The DRB is not required to provide any further discussion as to the propriety of the discharge.

(h) *Change of discharge: Issues of equity*. If the DRB concludes that a change in the discharge is warranted under equity standards the decisional document shall list each issue of equity upon which this conclusion is based. The DRB shall cite the facts in the record that demonstrate the relevance of the issue to the applicant's case. If the change in discharge does not constitute the full change requested by the applicant, the reasons for not giving the full change requested shall be discussed.

(i) *Denial of the full change requested: Issues of equity*. If the DRB rejects the applicant's position on an issue of equity, or if the decision otherwise provides less than the full change in discharge requested by the applicant, the decisional document shall note that conclusion. The DRB shall list reasons for its conclusions on each issue of equity in accordance with the following:

(1) If a reason is based in whole or in part upon a part, statute, constitutional provision, judicial determination, or other source of law, the DRB shall cite the pertinent source of law and the facts in the record that demonstrate the relevance of the source of law to the exercise of discretion on the issue of equity in the applicant's case.

(2) If a reason is based in whole or in part on a determination as to the occurrence or nonoccurrence of an event or circumstance, including a factor required by applicable Air Force regulations to be considered for determination of the character of and reason for the applicant's discharge, the DRB shall make a finding of fact for each such event or circumstance.

(i) For each such finding, the decisional document shall list the specific source of the information relied upon. This may include the presumption of regularity in appropriate cases. If the information is listed in the service record section of the decisional document, a citation is not required.

(ii) If a finding of fact is made after consideration of contradictory evidence in the record (including information cited by the applicant or otherwise identified by members of the DRB), the decisional document shall set forth the conflicting evidence, and explain why the information relied upon was more persuasive than the information that was rejected. If the presumption of regularity is cited as the basis for rejecting such information, the decisional document shall explain why the contradictory evidence was insufficient to overcome the presumption. In an appropriate case, the explanation as to why the contradictory evidence was insufficient to overcome the presumption of regularity may consist of a statement that the applicant failed to provide sufficient corroborating evidence, or that the DRB did not find the applicant's testimony to be sufficiently credible to overcome the presumption.

(3) If the DRB disagrees with the position of the applicant on an issue of equity, the following guidance applies in addition to the guidance in § 865.112(i) (1) and (2):

(i) The DRB may reject the applicant's position by explaining why it disagrees with the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant).

(ii) The DRB may reject the applicant's position by explaining why the principles set forth in the applicant's issue (including principles derived from cases cited by the applicant) are not relevant to the applicant's case.

(iii) The DRB may reject an applicant's position by explaining why the applicant's issue is not a matter upon which the DRB grants a change in discharge as a matter of equity. When the applicant indicates that the issue is to be considered in conjunction with other specified issues, the explanation will address all such issues.

(iv) The DRB may reject the applicant's position on the grounds that other specified factors in the case preclude granting relief, regardless of whether the DRB agreed with the applicant's position.

(v) If the applicant takes the position that the discharge should be changed as a matter of equity because of an alleged error in a record associated with the discharge, and the record has not been corrected by the organization with primary responsibility for corrective action, the DRB may respond that it will presume the validity of the record in the absence of such corrective action. However, the DRB will consider whether it should exercise its equitable powers to change the discharge on the basis of the alleged error. If it declines to do so, the DRB shall explain why the applicant's position did not provide a sufficient basis for the change in the discharge requested by the applicant.

(4) When the DRB concludes that aggravating factors outweigh mitigating factors, the DRB must set forth reasons such as the seriousness of the offense, specific circumstances surrounding the offense, number of offenses, lack of mitigating circumstances, or similar factors. The DRB is not required, however, to explain why it relied on any such factors unless the applicability or weight of such factors are expressly raised as an issue by the applicant.

(5) If the applicant has not submitted any issues and the DRB has not otherwise relied upon an issue of equity for a change in discharge, the decisional document shall contain a statement to that effect, and shall note that the major factors upon which the discharge was based are set forth in the service record portion of the decisional document.

§ 865.113 Recommendations by the Director of the Personnel Council and Secretarial Review Authority.

(a) The Director of the Personnel Council may forward cases for consideration by the Secretarial Reviewing Authority (SRA) under rules established by the Secretary of the Air Force.

(b) The following categories of dicharge review requests are subject to

the review of the Secretary of the Air Force or the Secretary's designee.

(1) Cases in which a minority of the DRB panel requests their submitted opinions be forwarded for consideration (refer to § 865.110(h)).

(2) Cases when required in order to provide information to the Secretary on specific aspects of the discharge review function which are of interest to the Secretary.

(3) Any case which the Director, Air Force Personnel Council believes is of significant interest to the Secretary.

(c) The Secretarial Reviewing Authority is the Secretary of the Air Force or the official to whom he has delegated this authority. The SRA may review the types of cases described above before issuance of the final notification of a decision. Those cases forwarded for review by the SRA shall be considered under the standards set forth in § 865.121 and DOD Directive 1332.28.

(d) There is no requirement that the Director of the Personnel Council submit a recommendation when a case is forwarded to the SRA. If a recommendation is submitted, however, it should be in accordance with the guidelines described below.

(e) Format for Recommendation. If a recommendation is provided, it shall contain the Director's views whether there should be a change in the character of or reason for discharge (or both). If the Director recommends such a change, the particular change to be made shall be specified. The recommendation shall set forth the Director's position on decisional issues submitted by the applicant in accordance with the following:

(1) Adoption of the DRB's Decisional document. The recommendation may state that the Director has adopted the decisional document prepared by the majority. The Director shall ensure that the decisional document meets the requirements of this regulation.

(2) Adoption of the Specific Statements From the Majority. If the Director adopts the views of the majority only in part, the recommendation shall cite the specific matter adopted from the majority. If the Director modifies a statement submitted by the majority, the recommendation shall set forth the modification.

(3) Response to Issues Not Included in Matter Adopted From the Majority. The recommendation shall set forth the following if not adopted in whole or in part from the majority:

(i) The issues on which the Director's recommendation is based. Each such decisional issue shall be addressed by the Director in accordance with § 865.112 of this subpart.

(ii) The Director's response to items submitted as issues by the applicant under § 865.111 of this subpart.

(iii) Reasons for rejecting the conclusions of the majority with respect to decisional issues which, if resolved in the applicant's favor, would have resulted in greater relief for the applicant than that afforded by the Director's recommendation. Each issue shall be addressed in accordance with § 865.112 of this subpart.

(f) Copies of the proposed decisional document on cases that have been forwarded to the SRA (except for cases reviewed on the DRB's own motion without the participation of the applicant or the applicant's counsel) shall be provided to the applicant and counsel or representative, if any. The document will include the Director's recommendation to the SRA, if any. Classified information shall be summarized.

(g) The applicant shall be provided with a reasonable period of time, but not less than 25 days, to submit a rebuttal to the SRA. An issue in rebuttal consists of a clear and specific statement by the applicant in support of or in opposition to the statements of the DRB or Director on decisional issues and other clear and specific issues that were submitted by the applicant. The rebuttal shall be based solely on matters in the record when the DRB closed the case for deliberation or in the Director's recommendation.

(h) *Review of the Decisional document.* If corrections in the decisional document are required, the decisional document shall be returned to the DRB for corrective action. The corrected decisional document shall be sent to the applicant and counsel or representative, if any, but a further opportunity for rebuttal is not required unless the

correction produces a different result or includes a substantial change in the discussion by the DRB or Director of the issues raised by the majority or the applicant.

(i) *The Addendum of the SRA*. The decision of the SRA shall be in writing and shall be appended as an addendum to the decisional document.

(1) *The SRA's Decision*. The addendum shall set forth the SRA's decision whether there will be a change in the character of or reason for discharge (or both); if the SRA concludes that a change is warranted, the particular change to be made shall be specified. If the SRA adopts the decision recommended by the DRB or the Director, the decisional document shall contain a reference to the matter adopted.

(2) *Discussion of Issues*. In support of the SRA's decision, the addendum shall set forth the SRA's position on decisional issues, items submitted by an applicant and issues raised by the DRB and the Director. The addendum will state that:

(i) The SRA has adopted the Director's recommendation.

(ii) The SRA has adopted the proposed decisional document prepared by the DRB.

(iii) If the SRA adopts the views of the DRB or the Director only in part, the addendum shall cite the specific statements adopted. If the SRA modifies a statement submitted by the DRB or the Director, the addendum shall set forth the modification.

(3) *Response to Issues Not Included in Master Adopted From the DRB or the Director*. The addendum shall set forth the following if not adopted in whole or in part from the DRB or the Director:

(i) A list of the issues on which the SRA's decision is based. Each such decisional issue shall be addressed by the SRA. This includes reasons for rejecting the conclusion of the DRB or the Director with respect to decisional issues which, if resolved in the applicant's favor, would have resulted in change to the discharge more favorable to the applicant than that afforded by the SRA's decision.

(ii) The SRA's response to items submitted as issues by the applicant will be in accordance with § 865.111 of this subpart.

(4) *Response to Rebuttal*. (i) If the SRA grants the full change in discharge requested by the applicant (or a more favorable change), that fact shall be noted, the decisional document shall be addressed accordingly, and no further response to the rebuttal is required.

(ii) If the SRA does not grant the full change in discharge requested by the applicant (or a more favorable change), the addendum shall list each issue in rebuttal submitted by an applicant and shall set forth the response of the SRA under the following:

(A) If the SRA rejects an issue in rebuttal, the SRA may respond in accordance with the principles in § 865.112 of this subpart.

(B) If the matter adopted by the SRA provides a basis for the SRA's rejection of the rebuttal material, the SRA may note that fact and cite the specific matter adopted that responds to the issue in rebuttal.

(C) If the matter submitted by the applicant does not meet the requirements for rebuttal material in paragraph (g) of this section, that fact shall be noted.

(j) *Index Entries*. Appropriate index entries shall be prepared for the SRA's actions for matters that are not adopted from the DRB's proposed decisional document.

§ 865.114 Decisional document.

(a) A decisional document shall be prepared for each review conducted by the DRB.

(b) At a minimum, the decisional decument shall contain:

(1) The date, character of, and reason for discharge or dismissal certificate issued to the applicant upon separation from the military service, including the specific regulatory authority under which the discharge or dismissal certificate was issued.

(2) The circumstances and character of the applicant's service as extracted from military records and information provided by other government authority or the applicant, such as, but not limited to:

(i) Date of enlistment (YYMMDD).

(ii) Period of enlistment.

(iii) Age at enlistment.

(iv) Length of service.

(v) Periods of unauthorized absence.

(vi) Conduct and efficiency ratings (numerical or narrative).

(vii) Highest rank achieved.

(viii) Awards and decorations.

(ix) Educational level.

(x) Aptitude test scores.

(xi) Incidents of punishment pursuant to Article 15, Uniform Code of Military Justice (including nature and date of offense or punishment).

(xii) Conviction by court-martial.

(xiii) Prior military service and type of discharge received.

(3) A list of the type of documents submitted by or on behalf of the applicant (including a written brief, letters of recommendation, affidavits concerning the circumstances of the discharge, or other documentary evidence), if any.

(4) A statement whether the applicant testified, and a list of the type of witnesses, if any, who testified on behalf of the applicant.

(5) A notation whether the application pertained to the character of discharge, the reason for discharge, or both.

(6) The DRB's conclusions on the following:

(i) Whether the character of or the reason for discharge should be changed.

(ii) The specific changes to be made, if any.

(7) A list of the items submitted as issues on DD Form 293 or expressly incorporated therein and such other items submitted as issues by the applicant that are identified as inadvertently omitted under § 865.106(g)(4). If the issues are listed verbatim on DD Form 293, a copy of the relevant portion of the form may be attached. Issues that have been withdrawn or modified with the consent of the applicant need not be listed.

(8) The response to items submitted as issues by the applicant under the guidance in § 865.111.

(9) A list of decisional issues and a discussion of such issues under the guidance of § 865.112.

(10) Minority views, if any, when authorized under the rules of the Secretary of the Air Force.

(11) The recommendation of the Director when required by § 865.113.

(12) Any addendum of the SRA when required by § 865.113.

(13) Advisory opinions, including those containing factual information, when such opinions have been relied upon for final decision or have been accepted as a basis for rejecting any of the applicant's issues. Such advisory opinions or relevant portions thereof that are not fully set forth in the discussion of decisional issues or otherwise in response to items submitted as issues by the application shall be incorporated by reference. A copy of the opinions incorporated by reference shall be appended to the decision and included in the record of proceedings.

(14) A record of the DRB member's names and votes.

(15) Index entries for each decisional issue under appropriate categories listed in the Subject/Category listing.

(16) An authentication of the document by an appropriate official.

§ 865.115 Issuance of decisions following discharge review.

(a) The applicant and counsel or representative, if any, shall be provided with a copy of the decisional document and of any further action in review. The applicant (and counsel, if any) shall be notified of the availability of the complaint process in accordance with § 865.121 of this subpart and of the right to appeal to the Board for the Correction of Military Records. Final notification of decisions shall be issued to the applicant with a copy to the counsel or representative, if any.

(b) Notification to applicants with copies to counsel or representatives, shall normally be made through the U.S. Postal Service. Such notification shall consist of a notification of the decision, together with a copy of the decisional document.

(c) Notification of HQ AFMPC/MPCDOAl shall be for the purpose of appropriate action and inclusion of review matter in the military records. Such notification shall bear appropriate certification of completeness and accuracy.

(d) Actions on review by Secretarial Reviewing Authority, when occurring, shall be provided to the applicant and counsel or representative in the same manner as the notification of the review decision.

§ 865.116 Records of DRB proceeding.

(a) When the proceedings in any review have been concluded, a record thereof will be prepared. Records may include written records, electromagnetic records, or a combination thereof.

(b) At a minimum, the record will include the following:

(1) The application for review (DD Form 293).

(2) A record of the testimony in verbatim, summarized, or recorded form at the option of the DRB.

(3) Documentary evidence or copies thereof considered by the DRB other than the military record.

(4) Brief/arguments submitted by or on behalf of the applicant.

(5) Advisory opinions considered by the DRB, if any.

(6) The findings, conclusions, and reasons developed by the DRB.

(7) Notification of the DRB's decision to the cognizant custodian of the applicant's records, or reference to the notification document.

(8) Minority reports, if any.

(9) A copy of the decisional document.

§ 865.117 Final disposition of the record of proceedings.

The original record of proceedings and all appendices thereto shall in all cases be incorporated in the military record of the applicant and returned to the custody of the National Personnel Records Center (NPRC), St. Louis, Missouri. If a portion of the original record cannot be stored with the service record, the service record shall contain a notation as to the place where the record is stored.

§ 865.118 Availability of Discharge Review Board documents for public inspection and copying.

(a) A copy of the decisional document prepared in accordance with § 865.114 of this subpart, shall be made available for public inspection and copying promptly after a notice of final decision is sent to the applicant.

(b) To the extent required to prevent a clearly unwarranted invasion of personal privacy, identifying details of the applicant and other persons will be deleted from documents made available for public inspection and copying. Names, addresses, social security numbers, and military service numbers must be deleted. Written justification shall be made for all other deletions and shall be available for public inspection.

(c) The DRB shall ensure that there is a means for relating a decisional document number to the name of the applicant to permit retrieval of the applicant's records when required in processing a complaint in accordance with § 865.121 of this subpart.

(d) Any other privileged or classified material contained in or appended to any documents required to be furnished the applicant and counsel/representative or made available for public inspection and copying may be deleted therefrom only if a written statement of the basis for the deletions is provided the applicant and counsel/representative and made available for public inspection. It is not intended that the statement be so detailed as to reveal the nature of the withheld material.

(e) DRB documents made available for public inspection and copying shall be located in the Armed Forces Discharge Review/Correction Boards Reading Room. The documents shall be indexed in usable and concise form so as to enable the public and those who represent applicants before the DRB to isolate from all these decisions that are indexed those cases that may be similar to an applicant's case and that indicate the circumstances under and/or reasons for which the DRB or the Secretary of the Air Force granted or denied relief.

(1) The reading file index shall include, in addition to any other items determined by the DRB, the case number, the date, character of, reason for, and authority for the discharge. It shall further include the decisions of the DRB and reviewing authority, if any, and the issues addressed in the statement of findings, conclusions and reasons.

(2) The index shall be maintained at selected permanent locations throughout the United States. This ensures reasonable availability to applicants at least 30 days before a regional board review. The index shall also be made

available at sites selected for regional Boards for such periods as the DRB is present and in operation. An applicant who has requested a regional board review shall be advised in the notice of scheduled hearings.

(3) The Armed Forces Discharge Review/Correction Board Reading Room shall publish indexes quarterly for the DRB. The DRB shall be responsible for timely submission to the Reading Room of individual case information required for update of indexes. These indexes shall be available for public inspection or purchase (or both) at the Reading Room. This information will be provided to applicants in the notice of acceptance of the application.

(4) Correspondence relating to matters under the cognizance of the Reading Room (including request for purchase of indexes) shall be addressed to:

DA Military Review Board Agency, Attention: SFBA (Reading Room), Room 1E520, The Pentagon, Washington DC 20310

§ 865.119 Privacy Act information.

Information protected under the Privacy Act is involved in discharge review functions. The provisions of 32 CFR part 286a will be observed throughout the processing of a request for review of discharge or dismissal.

§ 865.120 Discharge review standards.

(a) *Objective of review*. The objective of a discharge review is to examine the propriety and equity of the applicant's discharge and to effect changes, if necessary. The standards of review and the underlying factors which aid in determining whether the standards are met shall be historically consistent with criteria for determining honorable service. No factors shall be established which require automatic change or denial of a change in a discharge. Neither the DRB nor the Secretary of the Air Force shall be bound by any methodology of weighing of the factors in reaching a determination. In each case, the DRB or Secretary of the Air Force shall give full, fair, and impartial consideration to all applicable factors prior to reaching a decision. An applicant may not receive a less favorable discharge than that issued at the time of separation. This does not preclude correction of clerical errors.

(b) *Propriety*. A discharge shall be deemed to be proper unless in the course of discharge review, it is determined that:

(1) There exists an error of fact, law, procedures, or discretion associated with the discharge at the time of issuance; and that the rights of the applicant were prejudiced thereby (such error shall constitute prejudicial error, if there is substantial doubt that the discharge would have remained the same if the error had not been made); or

(2) A change in policy by the Air Force made expressly retroactive to the type of discharge under consideration, requires a change in the discharge.

(c) When a record associated with the discharge at the time of issuance involves a matter in which the primary responsibility for corrective action rests with another organization (for example, another Board, agency, or court), the DRB will recognize an error only to the extent that the error has been corrected by the organization with primary responsibility for correcting the record.

(d) The primary function of the DRB is to exercise its discretion on issues of equity by reviewing the individual merits of each application on a case-by-case basis. Prior decisions in which the DRB exercised its discretion to change a discharge based on issues of equity (including the factors cited in such decisions or the weight given to factors in such decisions) do not blind the DRB in its review of subsequent cases because no two cases present the same issues of equity.

(e) The following applies to applicants who received less than fully honorable administrative discharges because of their civilian misconduct while in an inactive reserve component and who were discharged or had their discharge reviewed on or after April 20, 1971: the DRB shall either recharacterize the discharge to honorable without any additional proceedings or additional proceedings shall be conducted in accordance with the Court's Order of December 3, 1981, in Wood v. Secretary of Defense to determine whether proper grounds exist for the issuance of a less

than honorable discharge, taking into account that:

(1) An Under Other Than Honorable (formerly Undesirable) Discharge for an inactive reservist can only be based upon civilian misconduct found to have affected directly the performance of military duties;

(2) A General Discharge for an inactive reservist can only be based upon civilian misconduct found to have had an adverse impact on the overall effectiveness of the military, including military morale and efficiency.

(f) The following applies to applicants who received less than fully honorable administrative discharges (between June 21, 1971 and March 2, 1982) because evidence developed by or as a direct result of complusory urinalysis testing was introduced in the discharge proceedings. Applicants who believe they are members of the above category will so indicate this by writing "CATEGORY W" in block 7 of their DD Form 293. AFMPC/MPCDOA1 will expedite processing these applications to the designated "CATEGORY W" reviewer. For class members the designated reviewer shall either recharacterize the discharge to honorable without any additional proceedings or complete a review to determine whether proper ground exists for the issuance of a less than honorable discharge. If the applicant is determined not to be a class member, the application is returned to normal review procedure channels. If new administrative proceedings are initiated, the former service member must be notified of:

(1) The basis of separation other than drug abuse or use or possession of drugs based upon compelled urinalysis that was specified in the commander's report and upon which the Air Force now seeks to base a less than honorable discharge.

(2) The full complement of procedural protections that are required by current regulations.

(3) Name, address and telephone number of an Area Defense Counsel with whom the former service member has a right to consult, and

(4) The right to participate in the new proceedings to be conducted at the Air Force base nearest the former service member's current address, or to elect to maintain his or her present character of discharge.

(g) *Equity*. A discharge shall be deemed to be equitable unless:

(1) In the course of a discharge review, it is determined that the policies and procedures under which the applicant was discharged differ in material respects from policies and procedures currently applicable on a service-wide basis to discharges of the type under consideration provided that:

(i) Current policies or procedures represent a substantial enhancement of the rights afforded an applicant in such proceedings; and

(ii) There is substantial doubt that the applicant would have received the same discharge if relevant current policies and procedures had been available to the applicant at the time of the discharge proceedings under consideration.

(2) At the time of issuance, the discharge was inconsistent with standards of discipline in the Air Force; or

(3) In the course of a discharge review, it is determined that a change is warranted based upon consideration of the applicant's military record and other evidence presented to the DRB viewed in conjunction with the factors listed in this section and the regulations under which the applicant was discharged, even though the discharge was determined to have been otherwise equitable and proper at the time of issuance. Areas of consideration include, but are not limited to:

(i) Quality of Service, as evidenced by factors such as:

(A) Service History, including date of enlistment, period of enlistment, highest rank achieved, conduct or efficiency ratings (numerical or narrative).

(B) Awards and decorations.

(C) Letters of commendation or reprimand.

(D) Combat service.

(E) Wounds received in action.

(F) Record of promotions and demotions.

(G) Level of responsibility at which the applicant served.

(H) Other acts of merit that may not have resulted in a formal recognition through an award or commendation.

(I) Length of service during the period which is the subject of the discharge review.

(J) Prior military service and type of discharge received or outstanding post-service conduct to the extent that such matters provide a basis for a more thorough understanding of the performance of the applicant during the period of service which is the subject of the discharge review.

(K) Convictions by court-martial.

(L) Record of non-judicial punishment.

(M) Convictions by civil authorities while a member of the Air Force, reflected in the discharge proceedings or otherwise noted in military records.

(N) Record of periods of unauthorized absence.

(O) Records relating to a discharge in lieu of court-martial.

(ii) Capability to Serve, as evidenced by factors such as:

(A) *Total Capabilities*. This includes an evaluation of matters such as age, educational level, and aptitude scores. Consideration may also be given to whether the individual met normal military standards of acceptability for military service and similar indicators of an individual's ability to serve satisfactorily, as well as ability to adjust to the military service.

(B) *Family/Personal Problems*. This includes matters in extenuation or mitigation of the reason for discharge that may have affected the applicant's ability to serve satisfactorily.

(C) *Arbitrary or Capricious Actions*. This includes actions by individuals in authority which constitute a clear abuse of such authority and which, although not amounting to prejudicial error, may have contributed to the decision to discharge or to the characterization of service.

(D) *Discrimination*. This includes unauthorized acts as documented by records or other evidence.

§ 865.121 Complaints concerning decisional documents and index entries.

Former members of the Air Force or their counsel or representative may submit complaints with respect to the decisional document issued in the former member's case.

(a) All complaints should be processed in accordance with 32 CFR part 70 and should be forwarded to:

Assistant Secretary of Defense, Manpower, Reserve Affairs and Logistics, The Pentagon, Washington, DC 20331

(b) The Air Force Discharge Review Board will respond to all complaints in accordance with 32 CFR part 70.

§ 865.122 Summary of statistics for Discharge Review Board.

The Air Force Discharge Review Board shall prepare and provide to the Deputy Assistant Secretary of Defense (Military Personnel and Force Management) DASD(MP&FM), Office of the ASD(MRA&L), a semiannual report of discharge review actions in accordance with § 865.125.

§ 865.123 Approval of exceptions to directive.

Only the Secretary of the Air Force may authorize or approve a waiver of, or exception to, any part of this subpart.

§ 865.124 Procedures for regional hearings.

Composition of the board for these hearings consists of three members from Washington with augmentation by two members from nearby local Air Force resources. The nearest Air Force installation or Air Force Reserve Unit is tasked to provide two officers to serve as members of the DRB. Active duty members will serve on the board as an additional duty. Reserve members will be on a temporary tour of active duty (TTAD) for the duration of the hearings. Detailed information must be provided to the individuals selected to serve before each hearing date. The administrative staff in Washington processes all cases for regional hearings, establishes hearing dates, and returns the records to the Manpower and Personnel Center at Randolph AFB, Texas, when the case is finalized.

§ 865.125 Report requirement.

Semi-annual reports will be submitted by the 20th day of April and October for the preceding 6-month reporting period (1 October through 31 March

and 1 April through 30 September). The reporting period will be inclusive from the first through the last days of each reporting period. The report will contain four parts:

(a) Part 1—Regular Cases are all those that are not included in part 2 below.

(b) Part 2—Other cases include the following:

(1) Reconsideration of President Ford's memorandum of 19 January 1977.

(2) Special Discharge Review Program cases.

(3) Statutes of Limitation Cases—those heard under Pub. L. 95–126 by waiver of 10 U.S.C. 1553.

(c) Part 3—Total—combine parts 1 and 2.

(d) Part 4—Cases outstanding include all those eligible cases in which a DD Form 293 has been received but has not been heard by the Discharge Review Board as the reporting date for this report. Reports will be prepared by the Air Force Discharge Review Board and submitted to the Army Discharge Review Board (executive agent for DRB matters).

§ 865.126 Sample report format.

SUMMARY OF STATISTICS FOR AIR FORCE DISCHARGE REVIEW BOARD

RCS: DD-M(SA) 1489

[FY _____]

[_____]

	Record review		Hearing		Total	
	Applied	Number approved	Applied	Number approved	Applied	Number approved
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....

Part 1 Regular Cases.
Part 2 Other.
Part 3 Total.
Part 4 Cases Outstanding.

NOTE: Identify numbers separately for regional DRB hearings. Use of additional footnotes to clarify or amplify the statistic being reported is encouraged.

SUBCHAPTER H [RESERVED]

SUBCHAPTER I—MILITARY PERSONNEL

PART 881—DETERMINATION OF ACTIVE MILITARY SERVICE AND DISCHARGE FOR CIVILIAN OR CONTRACTUAL GROUPS

Sec.
881.1 Applying for discharge.
881.2 Screening the application.
881.3 Individual Service Review Board.
881.4 Processing the application.
881.5 If an application is approved.
881.6 If an application is denied.
881.7 Discharge upgrade.
881.8 Disposition of documents.
881.9 Form prescribed.
APPENDIX A TO PART 881—GLOSSARY OF TERMS

AUTHORITY: 38 U.S.C. 106.

SOURCE: 64 FR 33400, June 23, 1999, unless otherwise noted.

§ 881.1 Applying for discharge.

(a) Who may apply.

(1) You may apply for discharge if you were a member of a recognized group. A spouse, next of kin, or legal representative may apply on behalf of a deceased or mentally incompetent person. Proof of death or mental incompetency must accompany such an application.

(b) Where to apply.

(1) Send your application for discharge to the Directorate of Personnel Program Management, Separations Branch, HQ AFPC/DPPRS, 550 C Street West, Suite 11, Randolph AFB, TX 78150–4713.

(c) How to apply.

(1) Fill out DD Form 2168, *Application for Discharge of Member or Survivor of Member of Group Certified to Have Performed Active Duty With the Armed Forces of the U.S.*, or write a letter.

(2) Obtain DD Form 2168 from HQ AFPC/DPRS, 550 C Street West, Suite 11, Randolph AFB, TX 78150–4713 or the National Personnel Records Center (NPRC), 9700 Page Boulevard, St. Louis, MO 63132.

(3) Make your application as complete as possible; the burden of proof is on you. Provide all available evidence to document your membership in the group and what services you performed.

(d) Documentation may include:

(1) Flight logbooks.

(2) Separation or discharge certificates.

(3) Mission orders.

(4) Identification cards.

(5) Contracts.

(6) Personnel action forms.

(7) Employment records.

(8) Education certificates and diplomas.

(9) Pay vouchers.

(10) Certificates of awards.

(11) Casualty information.

(e) The Air Force will not under any circumstances provide or pay for legal representation for you.

§ 881.2 Screening the applications.

(a) HQ AFPC/DPPRS reviews your application and does one of the following:

(1) Refers your application to another military department and sends you a written notice or a copy of the referral letter.

(2) Returns your application without prejudice if the Secretary of the Air Force has not determined whether members of your group are certified for discharge. You may resubmit the application after the Secretary determines that your group is certified.

(3) Refers applications made by a group (or individuals on behalf of a group) to the Secretary of the Air Force, Manpower, Reserve Affairs and installations, Personnel Council (AFPC), The Pentagon, Washington, DC 20330 for further review. This part does not cover such applications.

(4) Returns the application to you if it is complete.

(5) Refers all complete applications to the Individual Service Review Board for further consideration.

§ 881.3 Individual Service Review Board.

(a) The Commander, Headquarters Air Force Personnel Center (HQ AFPC/CC) establishes the Individual Service Review Board as necessary.

(b) The Board consists of military members in grade Lieutenant Colonel or higher, and civilian members, grade

GS–12 or higher, appointed by the HQ AFPC/CC. Three members constitute a quorum. The senior member acts as Board chairperson. A nonvoting member keeps a record of the Board's actions on an application.

(c) The Directorate of Personnel Program Management, Separations Branch, HQ AFPC/DPPRS, 550 C Street West, Suite 11, Randolph AFB, TX 78150–4713, provides administrative support to the Board.

§ 881.4 Processing the application.

(a) Individual Service Review Board meets in closed session to consider the application, the evidence submitted, and other relevant information. Applicants or their representatives do not have the right to appear before the Board.

(b) The Board:

(1) Evaluates the evidence.

(2) Decides whether the applicant was a member of a recognized group during dates of its qualification.

(3) Decides whether to approve the application for discharge.

(4) Determines the period and character of the applicant's service.

§ 881.5 If an application is approved.

(a) If the Board approves an application for discharge and determines that it should be honorable, HQ AFPC/DPPRSO issues the applicant a DD Form 256AF, Honorable Discharge, and a DD Form 214, *Certificate of Release or Discharge from Active Duty* under AFI 36–3202, *Separation Documents* (formerly AFR 35–6).

(b) Enter a military grade on the DD Form 214 only if the Administrator of Veterans' Affairs requests it.

(c) Enter a pay grade on the DD Form 214 only for individuals who were killed or received service-related injuries or disease during the approved period of service. For proof of grade criteria, see DoD 1000.20, *Determinations of Active Military Service and Discharge Civilian or Contractual Personnel*, section E, paragraph 3g.

(d) If the Board approves an application for discharge but determines that it should be "under honorable conditions" (general discharge), it forwards the case to the Air Force Personnel Council (AFPC) for final decision. HQ AFPC/DPPRSO, 550 C Street West, Suite 20, Randolph AFB, TX 78150–4722, then issues the appropriate discharge certificate and a DD Form 214 to the applicant.

(e) To appeal the characterization of a discharge, submit DD Form 149, *Application for Correction of Military Record Under the Provisions of Title 10, U.S.C., Section 1552*, to the Secretary of the Air Force through the Air Force Review Boards Office (SAF/MIBR).

(f) If the member dies or is declared missing during the period of equivalent active military duty, the Directorate of Casualty Matters (HQ AFPC/DPW) issues DD Form 1300, *Report of Casualty*, including military pay grade, to the next of kin or a designated representative, according to DODI 1300.18, *Military Personnel Casualty Matters, Policies and Procedures*, and AFI 36–3002, *Casualty Services* (formerly AFR 30–25).

§ 881.6 If an application is denied.

(a) Once the Board has decided your case, HQ AFPC/DPPRS notifies you:

(1) If the Board denied your application for discharge because there is insufficient evidence to show that you belonged to a qualifying group.

(2) If the Board determines that your service cannot be characterized as "under honorable conditions."

(b) You have 60 days from the date of this notice to submit additional evidence or information to HQ AFPC/DPPRS, 550 C Street West, Suite 11, Randolph AFB, TX 78150–4713.

(c) If after 60 days you have submitted new evidence, the Board reviews the case again. If the Board determines that your application now merits approval, it proceeds according to paragraph (e).

(d) If you do not submit additional evidence or if, after review, the Board determines that your application should be denied, it forwards the case to the AFPC for final decision.

(e) HQ AFPC/DPPRS notifies you of the final decision.

(f) If your application is denied, the Board returns it to you without prejudicing any later consideration.

§ 881.7 Discharge upgrade.

If you are approved for a General Discharge, you may apply to the Air Force

Discharge Review Board for discharge upgrade under AFI 36–3201, *Air Force Discharge Review Board* (formerly AFR 20–10) or to the Air Force Board for Correction of Military Records under AFI 36–2603, *Air Force Board for Correction of Military Records* (formerly AFR 31–3). SAF/MIBR provides copies of these instructions and application forms to individuals who received a General Discharge.

§ 881.8 Disposition of documents.

(a) File a copy of the application, supporting evidence, and DD Form 214 in the Master Personnel Records Groups maintained at the National Personnel Records Center, St. Louis, MO 63132, for approved cases. Send copies of DD Form 214 to:

(1) The applicant.

(2) The Veterans' Administration.

(3) HQ AFPC/DPPRS, 550 C Street West, Suite 11, Randolph AFB, TX 78150–4713.

§ 881.9 Form prescribed.

The following form, DD Form 2168, *Application for Discharge of Member or Survivor of Member of a Group Certified To Have Performed Active Duty With the Armed Forces of the U.S.*, is required for processing the stated claims.

APPENDIX A TO PART 881—GLOSSARY OF TERMS

Active Military Service—See 38 U.S.C. 106.

Civilian or Contractual Group—An organization whose members rendered service to the U.S. Air Force or a predecessor organization during a period of armed conflict. In that capacity the members were considered civilian employees with the Armed Forces or contractors with the U.S. Government, providing direct support to the Armed Forces. An example of such a group is the Women's Air Force Service Pilots, who were Federal civilian employees attached to the U.S. Army Air Force during World War II.

Discharge—Complete severance from the active military service. The discharge includes a reason and characterization of service.

Recognized Group—A group whose service the Secretary of the Air Force has determined was "active duty for the purposes of all laws administered by the Department of Veterans' Affairs," such as VA benefits under 38 U.S.C. 106.

PART 884—DELIVERY OF PERSONNEL TO UNITED STATES CIVILIAN AUTHORITIES FOR TRIAL

Sec.
884.0 Purpose.
884.1 Authority.
884.2 Assigned responsibilities.
884.3 Placing member under restraint pending delivery.
884.4 Release on bail or recognizance.
884.5 Requests under the interstate agreement on Detainer's Act.
884.6 Requests by Federal authorities for military personnel stationed within the United States and its possessions.
884.7 Requests by state and local authorities when the requested member is located in that state.
884.8 Request for delivery by state authorities when the member is located in a different state.
884.9 Requests for custody of members stationed outside the United States.
884.10 Returning members, employees, and family members from overseas.
884.11 Procedures for return of an Air Force member to the United States.
884.12 Delays in returning members to the United States.
884.13 Denials of a request for return of a member to the United States.
884.14 Compliance with court orders by civilian employees and family members.
884.15 Procedures involving a request by Federal or state authorities for custody of an overseas civilian employee or a command-sponsored family member.
884.16 Reporting requests for assistance and action.
884.17 Commander's instruction letter to member.
884.18 Civilian authority's acknowledgment of transfer of custody and agreement to notify member's commander.

AUTHORITY: 10 U.S.C. 814; 10 U.S.C. 8013; Sec. 721(a), Pub. L. 100–456, 102 Stat. 2001.

SOURCE: 65 FR 64348, Oct. 27, 2000, unless otherwise noted.

§ 884.0 Purpose.

This part establishes procedures for making Air Force members, civilian personnel, and family members available to U.S. civilian authorities for trial or specified court appearances. It implements 32 CFR part 146. This part does not confer any rights, benefits, privileges, or form of due process procedure upon any individuals.

§ 884.1 Authority.

A general court martial convening authority (GCMCA) may authorize delivery of a member of that command to Federal or state civil authorities. The GCMCA may delegate this authority to an installation or equivalent commander. See AFPD 51–10, Making Military Personnel, Employees, and Dependents Available to Civilian authorities,[1] paragraphs 8 and 9 for sources of authority.

§ 884.2 Assigned responsibilities.

(a) The Under Secretary of Defense (USD), Personnel & Readiness (P&R), is the denial authority for all requests for return of members to the United States for delivery to civilian authorities when the request falls under § 884.9(e).

(b) The Air Force Judge Advocate General (TJAG) may approve requests that fall under § 884.9(e) or recommend denial of such requests. TJAG or a designee may approve or deny:

(1) Requests for return of members to the United States for delivery to civilian authorities when the request falls under § 884.9(f).

(2) Requests for delays of up to 90 days completing action on requests for return of members to the United States for delivery to civilian authorities.

(c) The Air Force Legal Services Agency's Military Justice Division (HQ AFLSA/JAJM), 172 Luke Avenue, Suite 343, Bolling AFB, DC 20332–5113, processes requests for return of members to the United States for delivery to civilian authorities and notifies requesting authorities of decisions on requests. HQ AFLSA/JAJM completes action on requests within 30 days after receipt of the request, unless a delay is granted; they send all reports and notifications to USD/P&R and to the DoD General Counsel (DoD/GC), as required by this part; and they handle all communications with requesters.

§ 884.3 Placing member under restraint pending delivery.

Continue restraint only as long as is reasonably necessary to deliver the member to civilian authorities. See AFPD 51–10, paragraph 5. To determine whether probable cause exists and whether a reasonable belief exists that restraint is necessary, the commander should refer to the Manual for Courts-Martial (MCM), 1984, specifically, Rules for Courts-Martial (RCM) 305(h)(2)(B), and the discussion following it. The requirement for the formal review of restraint found in MCM 1984, RCM 305, and AFI 51–201, Military Justice Guide,[2] does not apply.

§ 884.4 Release on bail or recognizance.

(a) Before delivering an Air Force member to a civilian authority, the commander or designee directs the member in writing to report to a designated Air Force unit, activity, or recruiting office for further instructions in the event the civilian authority releases the member (see § 884.17). The commander designates the member's unit, if the civilian authority is in the immediate vicinity of the member's base. The commander advises the designated Air Force unit, activity, or recruiting office of the situation. Once the member has been released and has reported to the designated authority, it immediately sends the member's name, rank, Social Security number (SSN). organization, and other pertinent information to the member's commander, who then provides further instructions.

(b) The member's commander notifies the military personnel flight (MPF) of the situation. In turn, the MPF provides an information copy to the Air Force Personnel Center (AFPC) assignment office responsible for the member's Air Force specialty code (AFSC), as listed in AFMAN 36–2105, Officer Classification,[3] or AFMAN 36–2108, Airman Classification.[3] If contact cannot be made with the member's commander, the Air Force unit, activity, or recruiting office previously designated by the commander obtains instructions from HQ AFPC/DPMARS or DPMRPP2.

[1] Air Force publications may be obtained through NTIS, 5285 Port Royal Road, Springfield, VA 22161, if not available online at *http://afpubs.hq.af.mil*.

[2] See footnote in § 884.1.

[3] See footnote in § 884.1.

§ 884.5 Requests under the interstate agreement on Detainer's Act.

When either the prisoner or state authorities make a request under the Detainer's Act, follow the procedures in Title 18 U.S.C. App. Section 1, *et seq.* The Act applies only to a person who has entered upon a term of imprisonment in a penal or correctional institution and is, therefore inapplicable to members in pretrial confinement.

§ 884.6 Requests by Federal authorities for military personnel stationed within the United States and its possessions.

(a) When Federal authorities request the delivery of service members, the Air Force will normally deliver service members when the request is accompanied by a warrant issued pursuant to the Federal Rules of Criminal Procedure, rule 4, or when a properly identified Federal officer represents that such a warrant has been issued.

(b) A U.S. marshal, deputy marshal, or other officer authorized by law will call for and take into custody persons desired by Federal authorities for trial. The officer taking custody must execute a statement in substantially the form set out in § 884.18.

§ 884.7 Requests by state and local authorities when the requested member is located in that state.

(a) The Air Force normally will turn over to the civilian authorities of the state, upon their request. Air Force members charged with an offense against state or local law. Each request by such civilian authorities for the surrender of a member of the Air Force should normally be accompanied by a copy of an indictment, information, or other document used in the state to prefer charges, or a warrant that reflects the charges and is issued by a court of competent jurisdiction.

(b) Before making delivery to civilian authorities of a state, the commander having authority to deliver will obtain a written agreement, substantially in the form of § 884.18, from a duly authorized officer of the state.

(c) Where the state authority cannot agree to one or more of the conditions set out in the form, the commander may authorize modification. The requirements of the agreement are substantially met when the state authority informs the accused's commander of the accused's prospective release for return to military authorities and when the state furnishes the accused transportation back to his or her station, together with necessary funds to cover incidental expenses en route. The accused's commander provides copies of the statement or agreement of this section and in § 884.6(b) to the civilian authority to whom the member was delivered and to the Air Force unit, activity, or recruiting office nearest to the place of trial designated in the agreement as the point of contact in the event of release on bail or on recognizance (see § 884.4). The accused's commander immediately notifies the civilian authority if the member has been discharged from the Air Force.

§ 884.8 Request for delivery by state authorities when the member is located in a different state.

(a) This part applies to members who are located in the United States. With respect to the extradition process, Air Force personnel have the same status as persons not in the Armed Forces. Accordingly, if a state other than the state in which the member is located requests the delivery of a military member, in the absence of a waiver of extradition process by the member concerned, that state must use its normal extradition procedures to make arrangements to take the individual into custody in the state where he or she is located.

(b) The Air Force will not transfer a military member from a base within one state to a base within another state for the purpose of making the member amenable to prosecution by civilian authorities.

§ 884.9 Requests for custody of members stationed outside the United States.

(a) Authority. This section implements Pub. L. 100–456, section 721(a), and DoD Directive 5525.9, December 27, 1988.

(b) The Air Force expects members to comply with orders issued by Federal or state court of competent jurisdiction, unless noncompliance is legally

justified. Air Force members who persist in noncompliance are subject to adverse administrative action, including separation for cause under AFI 36–3206, Administrative Discharge Procedures, and AFI 36–3208, Administrative Separation of Airmen.

(c) Air Force officials will ensure that members do not use assignments or officially sponsored residence outside the United States to avoid compliance with valid orders of Federal or state court of competent jurisdiction.

(d) Noncompliance with a court order may be legally justified when the individual can adequately demonstrate that the conduct, which is the subject of the complaint or request, was sanctioned by supplemental court orders, equally valid court orders of other jurisdictions, good faith legal efforts to resist the request, or other reasons. HQ USAF/JAG, HQ AFLSA/JACA, and Air Force legal offices in the jurisdiction concerned will provide legal support to servicing staff judge advocates who request assistance in reviewing these issues.

(e) When Federal, state, or local authorities request delivery of an Air Force member stationed outside the United States who is convicted of or charged with a felony or other serious offense or who is sought by such authorities in connection with the unlawful or contemptuous taking of a child from the jurisdiction of a court or from the lawful custody of another person, the member's commander will normally expeditiously return the member to the United States for delivery to the requesting authorities.

(1) A serious offense is defined as one punishable by confinement for more than 1 year under the laws of the requesting jurisdiction.

(2) Delivery of the member is not required if the controversy can be resolved without returning the member to the United States or if the request for delivery of the member is denied in accordance with this instruction.

(f) Ordinarily, do not return an Air Force member stationed outside the United States to the United States for delivery to civilian authorities if the offense is not specified in paragraph (e) of this section. TJAG may direct return when deemed appropriate under the facts and circumstances of the particular case.

(g) Before taking action under this section, give the member the opportunity to provide evidence of legal efforts to resist the court order or process sought to be enforced or otherwise to show legitimate cause for noncompliance.[4]

§ 884.10 Returning members, employees, and family members from overseas.

The Air Force expects persons overseas wanted by Federal or state authorities to make themselves available to those authorities for disposition. If they do not, DoD Directive 5525.9, Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders, 10 U.S.C. 814, and Pub. L. 100–456, section 721(a), authorize and require commanders to respond promptly to requests from civilian authorities for assistance in returning members, civilian employees, and family members from overseas.

§ 884.11 Procedures for return of an Air Force member to the United States.

(a) Include the following information in a request for return of an Air Force member to the United States for delivery to civilian authorities.

(1) Fully identify the member sought by providing the member's name, grade, SSN, and unit of assignment, to the extent the information is known.

(2) Specify the offense for which the member is sought. If the member is charged with a crime, specify the maximum punishment under the laws of the requesting jurisdiction. Specify whether the member is sought in connection with the unlawful or contemptuous taking of a child from the jurisdiction of a court or the lawful custody of another.

(3) Include copies of all relevant requests for assistance, indictments, information, or other instruments used to bring charges, all relevant court orders or decrees, and all arrest warrants, writs of attachment or capias (writs authorizing arrests), or other

[4] See footnote in § 884.1

process directing or authorizing the requesting authorities to take the member into custody. Also, include reports of investigation and other materials concerning the background of the case if reasonably available.

(4) Indicate whether the requesting authorities will secure the member's lawful delivery or extradition from the port of entry to the requesting jurisdiction, whether they will do so at their own expense, and whether they will notify HQ AFLSA/JAJM of the member's release from custody and of the ultimate disposition of the matter.

(5) Any U.S. attorney or assistant U.S. attorney, governor or other duly authorized officer of a requesting state or local jurisdiction, or the judge, magistrate, or clerk of a court of competent jurisdiction must sign the request.

(b) Civilian authorities making requests for return of members to the United States for delivery to them should direct their request to HQ AFLSA/JAJM. If another Air Force agency or official receives the request, immediately send it to HQ AFLSA/JAJM.

(c) Upon receipt of a request, HQ AFLSA/JAJM promptly notifies the member's commander, who consults with the servicing staff judge advocate. The commander provides a report of relevant facts and circumstances and recommended disposition of the request through command channels to HQ AFLSA/JAJM. If the commander recommends denial of the request or a delay in processing or approving it, the commander provides the information specified in § 884.12(a)(1) through (a)(4) or § 884.13(a)(1) through (a)(4).

(d) After proper authority has approved a request for return of a member to the United States for delivery to civilian authorities, HQ AFLSA/JAJM notifies AFPC of the decision to return the member to the United States. AFPC issues permanent change of station (PCS) orders, assigning the member to an installation as close to the requesting jurisdiction as possible, considering the needs of the Air Force for personnel in the member's rank and AFSC.

(e) HQ AFLSA/JAJM notifies requesting authorities of the member's new assignment, port of entry into the United States and estimated time of arrival. Except during unusual circumstances, HQ AFLSA/JAJM notifies requesting authorities at least 10 days before the member's return.

§ 884.12 Delays in returning members to the United States.

(a) On a request to return a member to the United States for delivery to civilian authorities. TJAG may grant a delay of not more than 90 days in completing action when one or more of the following are present:

(1) Efforts are in progress to resolve the controversy to the satisfaction of the requesting authorities without the member's return to the United States.

(2) Additional time is required to permit the member to provide satisfactory evidence of legal efforts to resist the request or to show legitimate cause for noncompliance.

(3) Additional time is required to permit the commander to determine the specific effect of the loss of the member on command mission and readiness or to determine pertinent facts and circumstances relating to any international agreement, foreign judicial proceeding, DoD, Air Force, or other military department investigation or court-martial affecting the member.

(4) Other unusual facts or circumstances warrant delay.

(b) AFLSA/JAJM promptly reports all delays in cases falling under AFPD 51–10,[5] paragraph 3, through SAF/GC and SAF/MI or USD/P&R and to DoD/GC.

(c) Delays in excess of 90 days are not authorized in cases falling under AFPD 51–10, paragraph 3, unless approved by USD/P&R.

§ 884.13 Denials of a request for return of a member to the United States.

(a) A request for return of a member to the United States for delivery to civilian authorities may be denied when:

(1) The member's return would have an adverse impact on operational readiness or mission requirements.

(2) An international agreement precludes the member's return.

[5] See footnote in § 884.1.

(3) The member is the subject of foreign judicial proceedings, court-martial, or a DoD, Air Force, or other military department investigation.

(4) The member showed satisfactory evidence of legal efforts to resist the request or other legitimate cause for noncompliance or when other unusual facts or circumstances warrant a denial.

(b) Commanders promptly send to HQ AFLSA/JAJM information supporting a determination that denial may be appropriate. In cases warranting denial, TJAG promptly sends a recommendation and supporting documentation, through SAF/GC and SAF/MI, to USD/P&R for decision.

(c) The fact that a recommendation for denial is pending does not by itself authorize noncompliance or a delay in compliance with any provision of this section, but TJAG may consider a pending request for denial in determining whether to grant a delay.

§ 884.14 Compliance with court orders by civilian employees and family members.

(a) The Air Force expects civilian employees and family members to comply with orders issued by Federal or state court of competent jurisdiction, unless noncompliance is legally justified. Air Force civilian employees who persist in noncompliance are subject to adverse administrative action, including separation for cause as provided in AFI 36–704, Discipline and Adverse Actions (PA).[6]

(b) Air Force officials ensure that civilian personnel and family members do not use assignments or officially sponsored residence outside the United States to avoid compliance with valid orders of Federal or state court of competent jurisdiction.

§ 884.15 Procedures involving a request by Federal or state authorities for custody of an overseas civilian employee or a command-sponsored family member.

(a) The procedures of this section apply to civilian employees, including nonappropriated fund instrumentality (NAFI) employees, who are assigned outside the United States, and to command-sponsored family members residing outside the United States.

(b) This section applies only when Air Force authorities receive a request for assistance from Federal, state, or local authorities involving noncompliance with a court order and when noncompliance is the subject of any of the following: An arrest warrant; indictment, information, or other document used in the jurisdiction to prefer charges; or a contempt citation involving the unlawful or contemptuous removal of a child from the jurisdiction of the court or the lawful custody of a parent or third party.

(c) To the maximum extent possible, consistent with provisions of international agreements and foreign court orders, DoD and military department investigations, and judicial proceedings, commanders comply with requests for assistance. After exhausting all reasonable efforts to resolve the matter without the employee or family member returning to the United States, the commander shall strongly encourage the individual to comply. The commander shall consider imposing disciplinary action (including removal) against the employee or withdrawing command sponsorship of the family member, as appropriate, for failure to comply.

§ 884.16 Reporting requests for assistance and action.

The commander or designee promptly reports each request for assistance and intended action by message. Send reports to HQ AFLSA/JAJM, which submits required reports, through channels, to USD/P&R, HQ AFLSA/JAJM conducts all communications with requesters.

§ 884.17 Commander's instruction letter to member.

Subject: Instructions in Case of Release on Bail or Personal Recognizance

1. You are being delivered to the custody of civilian authorities, pursuant to the provisions of AFI 51–1001. This action does not constitute a discharge from the Air Force. In the event that you are released from civilian custody on bail or on your own recognizance, report immediately in person or by telephone to the (Air Force unit, activity, or recruiting office) for further instructions. Advise the commander of your name, rank,

[6] See footnote in § 884.1

SSN, organization, the circumstances of your release from custody, and the contents of this letter.

2. Certain restrictions may be placed upon you by civilian authorities in connection with your temporary release from custody. Be certain to include in your report what these limitations are.

3. AFI 51–1001, paragraph 4 provides that the authority to whom you report will notify your commander. If that is not possible, request the nearest Air Force base military personnel flight to contact HQ AFPC/DPMARS or DPMRPP2 by the fastest means available. Provide your name, rank, SSN, organization, and the circumstances of your release; further instruction will then be given to you.

[Signature Element]

§ 884.18 Civilian authority's acknowledgment of transfer of custody and agreement to notify member's commander.

1. A warrant for the arrest of (name, rank, and SSN), hereinafter referred to as the "member," and who is charged with (offenses) has been issued by (civilian authority) and in execution, thereof, I accept his or her custody.

2. In consideration of the delivery of member at (location) to me for trial upon the above charge, pursuant to the authority vested in me as (position), I hereby agree to the following:

a. The commander (name, rank, unit, telephone), will be advised of the disposition of the charges.

b. The member will be immediately returned to the custody of the military upon completion of the trial, if acquitted; or upon satisfying the sentence imposed, if convicted; or upon other disposition of the case.

c. The member's return will be to (location) or to such other place as may be designated by the Department of the Air Force.

3. The member's return will not be required if the member's commander has indicated that return is not appropriate. Instead of actual delivery, transportation for the member may be arranged so long as it is without expense to the United States or to the member.

4. Pending disposition of the charges, the member will remain in the custody of [name of agency and location], unless released on bail or the member's own recognizance, in which event [Air Force unit, activity, or recruiting office nearest place of trial] will be notified.

[Signature Element]

PART 887—ISSUING OF CERTIFICATES IN LIEU OF LOST OR DESTROYED CERTIFICATES OF SEPARATION

Sec.

887.0 Purpose.
887.1 Explanation of terms.
887.2 Safeguarding certificates.
887.3 Persons authorized CILs.
887.4 Requesting CILs.
887.5 Issuing CILs.
887.6 Who must sign CILs.
887.7 Persons separated under other than honorable conditions (undesirable or bad conduct) or dishonorable discharge.
887.8 Where to apply for certificates.
887.9 Furnishing photocopies of documents.

AUTHORITY: 10 U.S.C. 1041.

SOURCE: 53 FR 876, Jan. 14, 1988, unless otherwise noted.

§ 887.0 Purpose.

This part tells who may apply for a certificate in lieu of a lost or destroyed certificate of separation. It explains where and how to apply. It implements 10 U.S.C. 1041 and DOD Instruction 1332.13, December 23, 1968. This publication applies to ANG and USAFR members. It authorizes collection of information protected by the Privacy Act of 1974. The authority to collect the information is title 10, U.S.C. 8912 and Executive Order 9397. Each form used to collect personal information has an associated Privacy Act Statement that will be given to the individual before information is collected. System of records notice F035 AF MP C, Military Personnel Records System, applies.

§ 887.1 Explanation of terms.

(a) *Certificate in lieu (CIL).* A certificate issued in lieu of a lost or destroyed certificate of service, discharge, or retirement.

(b) *Service person.* One who:

(1) Is currently serving as a member of the Air Force; or

(2) Formerly served in the active military service as a member of the Air Force and all military affiliation was terminated after September 25, 1947.

(c) *Surviving spouse.* A survivor who was legally married to a member of the service at the time of the member's death.

(d) *Guardian*. A person or group of persons legally placed in charge of the affairs of a service member adjudicated mentally incompetent.

§ 887.2 Safeguarding certificates.

Certificates of separation are important personal documents. Processing applications for CILs is costly to the Air Force. To keep requests for CILs at a minimum:

(a) Personnel officers will tell members of the importance of safeguarding the original certificates.

(b) Persons who issue CILs will type or stamp across the lower margin "THIS IS AN IMPORTANT RECORD—SAFEGUARD IT" (if it is not printed on the certificate).

NOTE: Do not show this legend on DD Form 363AF, Certificate of Retirement.

§ 887.3 Persons authorized CILs.

CILs may be issued only to:

(a) A service member whose character of service was honorable or under honorable conditions.

(b) A surviving spouse.

(c) A guardian, when a duly certified or otherwise authenticated copy of the court order of appointment is sent with the application.

§ 887.4 Requesting CILs.

(a) Standard Form 180 (SF 180), Request Pertaining to Military Records, should be used by persons who had service as shown in § 887.3(a). However, a letter request, with sufficient identifying data and proof that the original certificate of separation was lost or destroyed, may be used. Members on active duty will forward their applications through their unit commander.

(b) SF 180, or any similar form used by agencies outside the Department of Defense, will be used by persons shown in § 887.3(b), (c), and § 887.7.

NOTE: Persons authorized CILs may be assisted in their request by the Customer Service Unit (DPMAC) in the consolidated base personnel office.

§ 887.5 Issuing CILs.

The issuing authority makes sure that the proper CIL form is issued, particularly if the service member has had service in both the Army and Air Force. The assignment status as of September 26, 1947 determines if the person was in the Army or Air Force at the time of discharge or release from active duty. Separations that took place on or before September 25, 1947 are considered Army separations. Those that took place on or after September 26, 1947 are considered Air Force separations, unless the records clearly show the person actually served as a member of the Army during the period of service for which the CIL is requested. Individuals indicated in § 887.3 may be issued CILs prepared on one of the following forms:

(a) DD Form 303AF, Certificate in Lieu of Lost or Destroyed Discharge, is used to replace any lost or destroyed certificate of discharge from the Air Force.

(b) DD Form 363AF, Certificate of Retirement, is used to replace any lost or destroyed certificate of retirement from the Air Force (issued only to service members).

(c) AF Form 386, Certificate in Lieu of Lost or Destroyed Discharge (AUS), is used to replace any lost or destroyed certificate of discharge from the Army.

(d) AF Form 681, Certificate in Lieu of Lost or Destroyed Certificate of Service (AUS), is used to replace any lost or destroyed certificate of service, or like form, issued on release from extended active duty (EAD) in the Army.

(e) AF Form 682, Certificate in Lieu of Lost or Destroyed Certificate of Service (USAF), is used to replace any lost or destroyed certificate of service, or like form, issued on release from EAD in the Air Force.

§ 887.6 Who must sign CILs.

(a) DD Form 363AF must be signed by a general officer or colonel.

(b) All other CILs must be signed by a commissioned officer, NCO in grade of master sergeant or above, or a civilian in grade GS–7 or above.

§ 887.7 Persons separated under other than honorable conditions (undesirable or bad conduct) or dishonorable discharge.

Those persons whose character of service was under other than honorable conditions or dishonorable are not eligible for CILs. However, an official photocopy of the report of separation

or certificate of discharge (DD Form 214, Certificate of Release or Discharge From Active Duty, or equivalent form), if available, may be sent on written request of the member.

(a) On the DD Forms 214 issued before October 1, 1979, the following items will be masked out before a photocopy is sent out:

(1) Specific authority for separation.

(2) Narrative reason for separation.

(3) Reenlistment eligibility code.

(4) SPD or separation designation number (SDN).

(b) For DD Forms 214 issued after October 1, 1979, send one copy with the Special Additional Information Section, and one copy without it.

(c) If a report of separation is not available, furnish a brief official statement of military service. Use the letterhead stationery of the issuing records custodian. File copy of the statement in the master personnel record (MPerR).

(d) If (obsolete form) DD Form 258AF, Undesirable Discharge Certificate, has been issued, it may be replaced with DD Form 794AF, Discharge Under Other Than Honorable Conditions.

(e) A $4.25 fee may be charged for issuing a document under this section, with the exception of paragraph (d) of this section.

§887.8 Where to apply for certificates.

(a) For DD Form 363AF: Headquarters, Air Force Military Personnel Center, Officer Actions Branch (HQ AFMPC/DPMD00), Randolph AFB TX 78150–6001, for officers; and Headquarters, Air Force Military Personnel Center, Analysis and Certification Section (HQ AFMPC/DPMD0A2), Randolph AFB TX 78150–6001, for enlisted members. Applicants must attach a copy of the retirement order to SF 180 or letter.

(b) All other certificates:

(1) HQ AFMPC/DPMD00 for officers, and HQ AFMPC/DPMD0A2, for enlisted members, Randolph AFB TX 78150–6001 for:

(i) Members on EAD or on the temporary disability retired list (TDRL).

(ii) General officers in retired pay status.

(2) National Personnel Records Center, Military Personnel Records—Air Force (NPRC/MPR-AF), 9700 Page Boulevard, St. Louis MO 63132, for officers and enlisted members:

(i) Completely separated from the Air Force or Air National Guard.

(ii) In a retired pay status, except general officers.

(iii) In the retired Reserve who cannot become eligible for retired pay.

(3) Headquarters, Air Reserve Personnel Center, Reference Services Branch (HQ ARPC/DSMR), Denver CO 80280–5000, for Air National Guard and Air Force Reserve officers and enlisted members not on EAD, including retired Reserve who will be eligible for retired pay at age 60.

§887.9 Furnishing photocopies of documents.

This part does not prohibit authorities (see §887.8) from supplying photocopies of certificates of service, reports of separation, or similar documents. Agencies that provide copies of DD Form 214 (or their equivalent) will conspicuously affix an "official" seal or stamp on them to indicate that these documents are copies made from official United States Air Force military personnel records.

PARTS 888–888g [RESERVED]

SUBCHAPTER J—CIVILIAN PERSONNEL [RESERVED]

SUBCHAPTER K—MILITARY TRAINING AND SCHOOLS

PART 901—APPOINTMENT TO THE UNITED STATES AIR FORCE ACADEMY

Sec.
901.0 Purpose.

Subpart A—Appointment Policies and Requirements

901.1 General policy.
901.2 Appointments and nominations.
901.3 Categories of nominations for appointment.
901.4 Basic eligibility requirements.
901.5 Academic examination requirements.
901.6 Candidate fitness test requirement.

Subpart B—Nomination Procedures and Requirements

901.7 Precandidate evaluation.
901.8 Congressional and U.S. Possessions categories.
901.9 Vice-Presidential category.
901.10 Presidential category.
901.11 Children of deceased or disabled veterans and children of military or civilian personnel in a missing status category.
901.12 Honor military and honor Naval schools—AFROTC and AFJROTC category.
901.13 Children of Medal of Honor recipients category.
901.14 Regular airmen category.
901.15 Reserve airmen category.
901.16 Superintendent category.
901.17 Foreign students category.
901.18 Appointment vacancy selection.
901.19 Qualified alternate selection.
901.20 Notice of nomination.
901.21 Notification of selection or nonselection.
901.22 Notification of change of address or station assignment.
901.23 Filling Presidential and airmen nominating categories.
901.24 Supply of forms.
901.25 Obligation of cadet appointment.
901.26 Cadet's oath of allegiance.
901.27 Charging of appointees.
901.28 OMB approval of information collection requirements.

AUTHORITY: 10 U.S.C., Chapter 903, and 10 U.S.C. 8012, except as otherwise noted.

SOURCE: 51 FR 23221, June 26, 1986, unless otherwise noted.

NOTE: This part is derived from Air Force Regulation 53–10, October 22, 1985.

Part 806 of this chapter states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the material referenced herein.

§ 901.0 Purpose.

This part tells civilian and enlisted personnel (including Air Force Reserve and National Guard) the methods of applying and the requirements and procedures for appointing young men and women to the United States Air Force Academy.

NOTE: This part is affected by the Privacy Act of 1974. The systems of records prescribed in this part are authorized by 10 U.S.C., chapter 903; and 10 U.S.C. 8012. Each form that is subject to the provisions of part 806b.5 of this chapter, and is required by this part, contains a Privacy Act Statement either incorporated in the body of the document or in a separate statement accompanying each such document.

Subpart A—Appointment Policies and Requirements

§ 901.1 General policy.

Appointments as U.S. Air Force Academy cadets are offered to those candidates having the strongest potential to become successful career officers. Offers of appointment are made according to the law and guidance provided by HQ USAF to most effectively accomplish the Academy's mission. All candidates are appointed as cadets under the authority of the President; however, an appointment is conditional until the candidate is admitted.

§ 901.2 Appointments and nominations.

Appointments and nominations are based on statutory authority contained in 10 U.S.C., chapter 903. Specific authorities may nominate eligible applicants for appointment vacancies at the Academy. Each applicant must obtain a nomination to receive an appointment. Applicants may apply for a nomination in each category in which they are eligible.

§ 901.3 Categories of nominations for appointment.

All appointees must have a nomination in at least one of the following categories:

(a) Congressional and U.S. Possessions categories include the following nominating authorities:

(1) U.S. Senators and Representatives.

(2) Delegates in Congress from the District of Columbia, Guam, Virgin Islands, and American Samoa.

(3) Resident Commissioner of Puerto Rico.

(4) Governor of Puerto Rico.

(5) Administrator of the Panama Canal Commission.

(b) Vice-Presidential category.

(c) Presidential competitive category.

(d) Children of deceased or disabled veterans and children of military or civilian personnel in missing status competitive category.

(e) Honor military and honor Naval schools, Air Force Reserve Officers' Training Corps (AFROTC), and Air Force Junior Reserve Officers' Training Corps (AFJROTC) competitive category.

(f) Children of Medal of Honor recipients category.

(g) Air Force enlisted regular competitive category.

(h) Air Force enlisted reserve competitive category.

(i) Superintendent competitive category.

(j) Foreign students competitive category (40 foreign persons designated to receive instruction under 10 U.S.C 9344).

§901.4 Basic eligibility requirements.

Each applicant must meet the following eligibility requirements:

(a) *Age.* Applicants must be at least 17, and not have passed their 22nd birthday on July 1 of the year of entry into the Academy.

(b) *Citizenship.* Except for students sponsored by foreign governments under 10 U.S.C. 9344, applicants must be citizens or nationals of the United States. All incoming cadets must verify citizenship status before admission:

(1) For American-born citizens, certified birth certificate presented to the Director of Admissions (USAFA/RRS), U.S. Air Force Academy, Colorado Springs CO 80840–5651 before administration of oath of appointment.

(2) Foreign cadets must present certified copies of certificates of arrival and nationalization or citizenship to USAFA/RRS before administration of oath of appointment.

NOTE: Facsimiles, copies, photographs or otherwise of birth certificate or certificate of citizenship will not be accepted unless properly certified by the raised seal of the issuing authority.

(c) *Domicile.* If nominated by an authority designated in the Congressional and U.S. Possessions categories, the applicant must be domiciled within the constituency of such authority.

(d) *Exemplary standards.* Applicants must be of highest moral character, personal conduct, and integrity. The Academy requires applicants to explain or clarify any of the circumstances below. For any military applicant or nominee whose official records indicate questionable background, commanders furnish the applicable information to USAFA/RRS.

(1) Applicant is or has been a conscientious objector. In this case, an affidavit is required stating that such beliefs and principles have been abandoned so far as they pertain to willingness to bear arms and give full and unqualified military service to the United States.

(2) Any facts that indicate the applicant's appointment may not be consistent with the interests of national security.

(3) Conviction by court-martial of other than a "minor offense" (MCM, 1984, part V, paragraph 1e, page V–1) or conviction of a felony in a civilian court.

(4) Elimination from any officer training program or any preparatory school of the Army, Navy, or Air Force Academies for military inaptitude, indifference, or undesirable traits of character. This includes any person who resigned in lieu of impending charges or who was eliminated by official action.

(5) Habitual alcohol misuse or drug abuse which exceeds the standards of AFR 30–2 is disqualifying.

(6) Any behavior, activity, or association showing the applicant's conduct is incompatible with exemplary standards of personal conduct, moral character, and integrity.

(e) *Marital status.* Applicant must be unmarried. (Any cadet who marries is disenrolled from the Academy.)

(f) *Dependents.* Applicant must not have a legal obligation to support a child, children, or any other person.

NOTE: For the purpose of this regulation, children are defined as the natural children of a parent and adopted children whose adoption proceedings were initiated before their 15th birthday.

(g) *Medical requirements for admission.* Before being admitted to the academy, candidates must take a medical examination and meet the medical standards outlined in AFRs 160–13 and 160–43. All candidates must meet the medical standards specified by the Secretary of the Air Force. Waivers may be granted by the Air Force Academy Command Surgeon. As specified by HQ USAF, most of the candidates admitted to the Academy must meet the eligibility standards for flying training.

§ 901.5 Academic examination requirements.

Before being offered an appointment, candidates must take either the College Board Admission Testing Program (ATP) or the American College Testing Program (ACT) test.

(a) *ATP.* A candidate who elects to use the ATP tests must take the Scholastic Aptitude Tests (SAT). The candidate is encouraged but not required to take achievement tests of English Composition and Level 1 (Standard) Mathematics or Level II (Intensive) Mathematics. (Level 1 recommended for candidates without advanced high school mathematics.)

(b) *ACT.* Candidates who elect to use the ACT tests must take the complete battery of tests: English, mathematics, social studies, and natural sciences.

§ 901.6 Candidate fitness test requirement.

Before being offered an appointment, candidates must take a Candidate Fitness Test (CFT) which consists of exercises designed to measure muscular strength, coordination, and aerobic power. Waivers to the CFT requirement may be granted by the Air Force Academy Director of Athletics if a candidate's participation in high school athletics conflicts with test administration dates and the candidate clearly demonstrates an acceptable level of physical fitness.

Subpart B—Nomination Procedures and Requirements

§ 901.7 Precandidate evaluation.

The Air Force Academy conducts a precandidate evaluation program as an initial step in the admissions process and as an aid to Members of Congress in screening their applicants for nomination.

(a) Applicants normally are sent a precandidate packet, including USAFA Form 149, Precandidate Questionnaire, with a request for the applicant to provide academic, athletic, leadership, and medical information.

(b) The Academy evaluates the precandidate information and provides an analysis to appropriate congressional offices. Such information gives the nominating authorities an indication of the applicant's potential to qualify for admission and the applicant's self-reported medical status; it does not, however, reflect the applicant's final admission status. It is intended only to aid in selecting the best-qualified applicants for nomination.

(c) Applicants whose evaluation indicates they are fully qualified will be notified and advised to seek a nomination. Individuals whose evaluations reflect areas needing improvement are informed and encouraged to submit additional test scores or information in an effort to meet the qualifying levels.

§ 901.8 Congressional and U.S. Possessions categories.

Individuals who meet the basic eligibility requirements of § 901.4 may apply for a nomination according to their domicile (permanent legal residence).

(a) U.S. Senators, U.S. Representatives, the District of Columbia Delegate to the House of Representatives, and the Resident Commissioner of Puerto Rico are each authorized a quota of five cadets attending the Academy at any one time. If a vacancy occurs in their quota, each may nominate ten candidates to fill each vacancy.

(b) Delegates in Congress from Guam and from the Virgin Islands are each

authorized a quota of two cadets attending the Academy at any one time. If a vacancy occurs in their quota, each may make ten nominations. Eligible residents may apply for a nomination directly to their Delegate.

(c) The Governor of Puerto Rico, the Delegate from American Samoa, and the Panama Canal Commission Administrator may each have one cadet attending the Academy and each may nominate ten candidates to fill their vacancy.

(1) Applicants domiciled in and natives of Puerto Rico may apply to the Governor of Puero Rico in addition to the Resident Commissioner.

(2) Applicants domiciled in American Samoa may apply to their Delegate.

(3) Children of civilian personnel of the U.S. Government residing in the Republic of Panama who are citizens of the United States may apply to the Panama Canal Commission Administrator.

(d) Nominating authorities in these categories normally submit their nominations by January 31 for the class entering the following summer.

(1) These nominating authorities may nominate only if a vacancy occurs from their authorized quota of cadets attending the Academy. Vacancies normally occur from graduation or separation of cadets from the Academy. Failure of a member of a graduating class to complete the Academy program with his class does not delay the admission of his or her successor. HQ USAF/DPPA maintains the master records of cadets nominated and appointed, determines vacancies in each nominating authority's quota, and validates nominations submitted by each nominating authority.

(2) These nominating authorities forward their nominations on DD Form 1870, Nomination for Appointment to the U.S. Military Academy, Naval Academy, or Air Force Academy, for each Air Force Academy nominee through HQ USAF/DPPA, Washington, DC 20330–5060, to USAFA/RRS, USAF Academy, Colorado Springs, CO 80840–5651.

§ 901.9 Vice-Presidential category.

The Vice President of the United States nominates from the United States at large, and is authorized a quota of five cadets attending the Academy at any one time. For each vacancy occurring in the quota, ten individuals may be nominated to fill the vacancy. Requests for a nomination are submitted directly to the Vice President no later than October 31. Any individual who meets the basic eligibility requirements of § 901.4 may apply to the Vice President for a nomination. The Vice President forwards nominations on DD Form 1870 for each Air Force Academy nominee through HQ USAF/DPPA, Washington, DC 20330–5060, to USAFA/RRS, USAF Academy, Colorado Springs, CO 80840–5651.

§ 901.10 Presidential category.

Appointments to fill vacancies from this category are made from candidates in order of merit. One hundred appointments are authorized each year.

(a) The child of a Regular or Reserve member of the Armed Forces of the United States is eligible for nomination if:

(1) The parent is on active duty and has completed 8 years of continuous active duty service (other than for training) by July 1 of the year that the candidate would enter the U.S. Air Force Academy; or

(2) The parent was retired with pay or was granted retired or retainer pay (children of reservists retired and receiving pay pursuant to 10 U.S.C., chapter 67, are ineligible); or

(3) The parent died after retiring with pay or died after being granted retired or retainer pay (children of such reservists who were retired and receiving pay pursuant to 10 U.S.C., chapter 67, are ineligible); and

(4) The applicant does not meet the eligibility requirements for the Children of Deceased or Disabled Veterans (CODDV) nomination category. (By law, a person eligible for appointment consideration under the DOCCV category is not a candidate in the Presidential category.)

(b) An eligible individual applies to USAFA/RRS, U.S. Air Force Academy, Colorado Springs, CO 80840–5651. A suggested letter format is included in the precandidate packet. The nominating period opens on May 1 and closes January 31. Applicants do not write directly

to the President of the United States, since the applications are processed by the Air Force Academy.

NOTE: For the purpose of this category, children are defined as the natural children of a parent and adopted children whose adoption proceedings were initiated before their 15th birthday.

§ 901.11 Children of deceased or disabled veterans and children of military or civilian personnel in a missing status category.

Appointments to fill vacancies from this competitive category are made from candidates in order of merit. Appointments authorized in this category are limited to 65 cadets at the Academy at any one time.

(a) The child of a deceased or disabled member of the Armed Forces of the United States is eligible for nomination if:

(1) The parent was killed in action or died of wounds or injuries received or diseases contracted while in active service or of preexisting injury or disease aggravated by active service; or

(2) The parent has a permanent service-connected disability rated at not less than 100 percent resulting from wounds or injuries received or diseases contracted while in active service, or of preexisting injury or disease aggravated by active service.

(b) The child of a parent who is in "missing status" is eligible if the parent is a member of the Armed Services or a civilian employee in active government service who is officially carried or determined to be absent in a status of missing; missing in action; interned in a foreign country; captured, beleaguered, or beseiged by a hostile force; or detained in a foreign country against the person's will.

(c) To request a nomination in this category, an individual submits an application to USAFA/RRS between May 1 and January 31. A suggested letter format is included in the precandidate packet.

NOTE: For the purpose of this category, children are defined as the natural children of a parent and adopted children whose adoption proceedings were initiated before the 15th birthday.

§ 901.12 Honor military and honor Naval schools—AFROTC and AFJROTC category.

Appointments to fill vacancies from this competitive category are made from candidates in order of merit. Twenty appointments are authorized each year.

(a) Honor military and honor Naval schools:

(1) Five honor graduates, or prospective honor graduates, from each designated honor military and honor naval school may be nominated to fill the vacancies allocated to this category. School authorities must certify that each nominee is a prospective honor graduate or an honor graduate, and meets the basic eligibility requirements.

(2) School authorities submit nominees directly to the Academy (USAFA/RRS) using specific nomination forms. Such nominations are submitted no later than January 31 of the entry year. Nominations are not limited to honor graduates of the current year. An individual eligible for nomination in this category applies to the administrative authority of the school involved.

(b) AFROTC and AFJROTC:

(1) Five students from each college or university AFROTC detachment may be nominated to compete for the vacancies allocated in this category.

(i) Students must apply for nomination to the Professor of Aerospace Studies (PAS) who must certify that the applicants meet the basic eligibility requirements and have or will have satisfactorily completed at least 1 year of scholastic work at the time the class for which they are applying enters the Academy.

(ii) The PAS uses the forms provided by the Academy to recommend for nomination the five best-qualified applicants to the president of the educational institution in which the AFROTC detachment is established.

(iii) Nominations from the president of the institution are submitted directly to the Academy (USAFA/RRS) by January 31 of the entry year.

(2) Five students from each high school AFJROTC detachment may be nominated to compete for the vacancies allocated to this category.

(i) Students must apply for nomination to the Aerospace Science Instructor, who must certify that the applicants meet the basic eligibility requirements and have or will have successfully completed the prescribed AFJROTC program by the end of the school year.

(ii) The Aerospace Science Instructor uses the nomination forms provided by the Academy to recommend for nomination the five best-qualified applicants to the principal of the high school in which the AFJROTC detachment is established.

(iii) Nominations from the principal of the high school are submitted directly to the Academy by January 31 of the entry year.

§901.13 Children of Medal of Honor recipients category.

(a) The child of any Medal of Honor recipient who served in any branch of the Armed Forces may apply for nomination. If applicants meet the eligibility criteria and qualify on the entrance examinations, they are admitted to the Academy. Appointments from this category are not limited.

(b) The applicant applies directly to the Academy requesting a nomination in this category. The nominating period opens on May 1 and closes January 31. A suggested letter format is included in the precandidate packet.

NOTE: For the purpose of this category, children are defined as the natural children of a parent and adopted children whose adoption proceedings were initiated before their 15th birthday.

§901.14 Regular airmen category.

Appointments to fill vacancies from this competitive category are made from candidates in order of merit. A total of 85 appointments are authorized from this category each year. Applications must be submitted no later than January 31 of the entry year.

(a) Any enlisted member of the Regular component of the Air Force may apply for nomination. Selectees must be in active duty enlisted status when appointed as cadets.

(b) Regular category applicants must arrange to have their high school transcripts submitted to USAFA/RRS. They must also complete AF Form 1786, "Application for Appointment to the United States Air Force Academy Under Quota Allotted to Enlisted Members of the Regular and Reserve Components of the Air Force," and submit it to their organization commander who:

(1) Determines if the applicant meets the basic eligibility requirements shown in §901.4 of this part. If disqualified, the application is returned and the applicant is informed of the reason.

(2) Advises the Consolidated Base Personnel Office (CBPO) to hold any reassignment action of the airman pending selection for an appointment. The CBPO places the airman in assignment availability code (AAC) 05 and coordinates on AF Form 1786. Applicants not selected are reassigned on Academy notification to the CBPO. Applicants to technical school follow-on training (if there is any) or PCS to their end assignment also are reassigned. The initial application package from the technical training center CBPO to USAFA/RRS includes the following information on all pipe-line students: name, SSN, AFSC, course graduation date, follow-on training, and end assignment.

(3) Completes an indorsement and forwards AF Form 1786 through the CBPO to USAFA/RRS, USAF Academy, Colorado Springs CO 80840–5651. The commander's indorsement must include a comprehensive statement of the applicant's character, ability, and motivation to become a career officer. Statements in the application regarding component, length of service, and date of birth must be verified from official records.

§901.15 Reserve airmen category.

Appointments to fill vacancies from this competitive category are made from candidates in order of merit. A total of 85 appointments are authorized from this category each year. Applications must be submitted no later than January 31 of the entry year.

(a) Any enlisted member of the Air Force Reserve or the Air National Guard of the United States (ANGUS) may apply for nomination.

(b) A Reserve commissioned officer who satisfactorily completes 1 year of

service in an active Reserve assignment by July 1 of the year in which admission is sought may apply for vacancies in this category. (Reserve commissioned officer on extended active duty (EAD) may apply for vacancies in the Regular competitive category.) If selected, such candidates must have commissioned officer status terminated and be in the enlisted Air Force Reserve before appointment as Air Force Academy cadets. Cadets in this category who are separated from the Air Force Academy without prejudice and under honorable conditions may apply for reappointment as Reserve commissioned officers.

(c) Reserve category applicants must arrange to have their high school transcripts submitted to USAFA/RRS, complete AF Form 1786, and submit it to their organization commander. The organization commander processes the application as outlined in § 901.14(b). A Reserve applicant is not placed on active duty to be processed for nomination or appointment to the Air Force Academy.

(d) Reserve airmen on EAD as a result of an honor suspension from the Air Force Academy Cadet Wing must reapply for admission under the procedures specified in § 901.14(b). Additionally, the AF Form 1786 which they submit must be endorsed by their wing commander, as well as their squadron commander, and must make specific recommendations about their potential to conform to Cadet Honor Code standards.

§ 901.16 Superintendent category.

Fifty eligible applicants who have not secured a nomination to the Academy from any other nominating authority may be nominated by the Superintendent. Highly qualified applicants are selected for nomination from the nationwide precandidate program by the Academy. Appointments from this category are made in order of merit from the nationwide pool of qualified alternates to fill the class.

§ 901.17 Foreign students category.

(a) The Academy is authorized to provide instruction to as many as 40 foreign persons at any one time. Foreign citizens must apply to the government of their own country. Coordination with the U.S. Embassy is necessary to ensure all admission and appointment requirements are met. HQ USAF/DPPA effects necessary consultation before nomination invitations are forwarded to each country.

(b) The application must contain complete particulars about the applicant's background and must be submitted as early as possible. Nominations from this category must be received by the Academy by December 31 before their desired summer admission. Applicants in these categories must meet the eligibility and admissions requirements established for all Academy candidates, except the requirement to be a U.S. citizen, and they must be able to read, write, and speak English proficiently.

§ 901.18 Appointment vacancy selection.

To fill a vacancy in the Vice-Presidential quota or in the quota of a nominating authority in the congressional and U.S. Possessions categories, selections for appointment offers are made according to the following nomination methods.

(a) *The principal numbered-alternate method.* The nominating authority indicates his or her personal preference by designating a principal nominee and listing nine numbered alternate nominees in order of preference, and the appointment is offered to the first fully qualified nominee.

(b) *The principal competitive-alternate method.* The nominating authority designates his or her principal nominee and names up to nine other nominees who are evaluated by the Academy and ranked behind the principal nominee in order of merit. If the principal nominee is fully qualified, that individual is offered the appointment; otherwise, the fully qualified nominee ranked the highest by the Academy is offered the appointment.

(c) *The competitive method.* At the request of the nominating authority, the Academy evaluates the records of all the nominees and ranks them in order of merit. The fully qualified nominee ranked the highest by the Academy is offered the appointment.

§ 901.19 Qualified alternate selection.

Fully qualified candidates not offered appointments in their nominating category are placed in a nationwide pool of qualified alternates. To bring the Cadet Wing up to full strength, additional appointments are selected from this pool in order of merit. The first 150 additional appointments are of individuals having nominations from Members of Congress. Thereafter, three of every four additional appointments are of individuals having nominations from the Vice President, Members of Congress, Delegates to Congress (from the District of Columbia, Virgin Islands, and Guam), Governor of Puerto Rico, Resident Commissioner of Puerto Rico, or Administrator of Panama Canal Commission.

§ 901.20 Notice of nomination.

The Director of Admissions (USAFA/RRS) acknowledges receipt of all applicants' nominations. If not previously received, USAFA/RRS forwards a precandidate questionnaire for completion. If the precandidate questionnaire indicates the potential to qualify for admission to the Academy or the Preparatory School, USAFA/RRS sends the individual a candidate kit which includes: USAFA Form 146, AFA Candidate Personal Data Record; USAFA Form 147, AFA Candidate Activities Record; and USAFA Form 148, AFA Request for Secondary School Transcript; AF Form 2030, Drug Abuse Certificate; and complete processing instructions.

§ 901.21 Notification of selection or nonselection.

(a) Notification of candidates selected for appointment are furnished by USAFA/RRS to HQ USAF/DPPA. HQ USAF/DPPA notifies Members of Congress and the Vice President of offers of appointment. After HQ USAF/DPPA notifies the nominating sources and advises USAFA/RRS that notification has been completed, USAFA/RRS notifies each appointee (civilian, Regular or Reserve service member) by letter, enclosing an acceptance or declination statement form. On receipt of an acceptance statement for each unconditional offer of appointment, USAFA/RRS forwards the completed candidate file to Cadet Examinations and Records (USAFA/RR). Conditional offers of appointment that have been accepted are held by USAFA/RRS until the conditional factor is resolved—medical status cleared, satisfactory preparatory school or college transcript received, proof of citizenship provided, etc. HQ USAF/DPPA is notified of removal of conditional status from offer of appointment in order to notify nominating sources as stated above. USAFA/RR completes admissions inprocessing by:

(1) Forwarding an appointment kit which includes detailed reporting instructions to each appointee.

(2) Issuing invitation to travel orders.

(3) Notifying the Directorate of Cadet Personnel (USAFA/DPYC) of Regular airmen appointees. Regular airmen in technical school completes all phases of training, if time permits, before reporting to the Academy. On graduation, the airmen remain at the technical school in casual status (unless otherwise directed by HQ AFMPC/MPCRAC1) until earliest reporting date for the Academy.

(b) The Department of Defense Medical Examination Review Board (DODMERB) notifies applicants of their medical status. USAFA/RRS informs HQ USAF/DPPA of changes in medical status of candidates offered conditional appointments.

(c) USAFA/RRS notifies each unsuccessful candidate by May 1. For active duty Air Force personnel, the servicing CBPO also is notified and cancels the airman's Assignment Availability Code 05.

§ 901.22 Notification of change of address or station assignment.

The applicant or nominee is personally responsible for notifying USAFA/RRS, USAF Academy, Colorado Springs, CO 80840–5651, of every change of address or station assignment. Notifications from military personnel must include complete name, grade, SSN, and new organization or unit to which assigned.

§ 901.23 Filling Presidential and airmen nominating categories.

If any of the annual quotas of cadets authorized in the Regular airman, Reserve airman, or Presidential nomination categories are not filled, then candidates from the other two categories may fill the vacancies on a best-qualified basis.

§ 901.24 Supply of forms.

USAFA Forms 146, 147, 148 and 149 are stocked and issued by USAFA/RRS, USAF Academy, Colorado Springs, CO 80840–5651. DD Form 1870 is stocked and issued by the Air Force Academy Activities Group, HQ USAF/DPPA, Washington, DC 20330–5060.

§ 901.25 Obligation of cadet appointment.

(a) A cadet who enters the Air Force Academy directly from civilian status and takes an oath of allegiance as a cadet normally assumes a military service obligation of not less than 6 years nor more than 8 years under 10 U.S.C. 651.

(b) A cadet who enters the Air Force Academy from the Regular or Reserve component of the Air Force and fails to complete the Academy course of instruction reverts to enlisted status to complete any prior service obligation under 10 U.S.C. 516.

(c) If they are minors, cadets are required to sign an agreement with the parent's or guardian's consent that they will fulfill the following obligations:

(1) Complete the Academy course of instruction unless disenrolled from the Academy by competent authority.

(2) Accept an appointment and on graduation serve as a commissioned officer in a Regular component of one of the armed services for 5 years.

(3) Serve as a commissioned officer in the Reserve component until the 8th anniversary if authorized to resign from the Regular component before the 8th anniversary of their graduation.

(4) Be subject to the separation policies in AFR 53–3 and, perhaps, be required to serve on active duty in enlisted status if disenrolled from the Academy before graduation.

(5) Reimburse the U.S. Air Force under regulations prescribed by the Secretary of the Air Force for the costs of Academy education if the recipient, voluntarily or because of misconduct, fails to complete the period of active duty incurred.

§ 901.26 Cadet's oath of allegiance.

On admission, each appointee (except foreign cadets) will be required to take the following oath of allegiance:

> I (name), having been appointed an Air Force cadet in the United States Air Force, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office of which I am about to enter. So Help Me God.

If an appointee refuses to take and subscribe to the oath, the appointment is terminated.

§ 901.27 Charging of appointees.

Appointment of candidates is according to § 901.18. Selecting of the charged cadets from the nominees for each vacancy is accomplished as follows:

(a) *Principal nominee, numbered-alternate method.* Principal, if meeting the admission criteria, is appointed and charged. Otherwise the 1st alternate, if meeting the admission criteria, is appointed and charged or the next succeeding numbered alternate who meets the admission criteria is appointed and charged. In instances where a candidate received two principal nominations from two Congressional sources, the principal normally is charged to the Member of Congress submitting the principal nomination first.

(b) *Principal nominee, competitive-alternate method.* Principal, if meeting the admission criteria, is appointed and charged. All alternates are ranked according to merit. If the principal does not meet admission criteria, the highest ranking alternate is appointed and charged.

(c) *Competitive nominee method.* The group of competitive nominees are evaluated, ranked according to merit, and the highest-ranked nominee, if meeting the admission criteria, is appointed and charged.

(d) *Multiple Congressional nominations.* For candidates receiving numerous nominations, normally the candidate is charged to the congressional source. If the candidate is nominated by several congressional sources, the candidate normally is charged to the slate of the congressional member where the candidate ranks the highest, unless the candidate is the principal nominee or a numbered alternate.

(e) *Other sources of nomination.* All other candidates not nominated by congressional, Vice-Presidential, or U.S. Possessions who are appointed are charged to that nominating source (Presidential, AFJROTC, AFROTC, CODDV, Medal of Honor, etc.).

(f) *Qualified alternates.* To bring the Cadet Wing up to strength, the qualified alternate appointed according to §901.19 is charged to the Secretary of the Air Force as a qualified alternate. Those candidates having congressional, Vice-Presidential, or U.S. Possessions nominations appear as a qualified alternate for that nominating source.

(g) *Multiple congressional and other sources of nominations.* For appointees who have multiple nominations, USAFA/RRS determines the appointment category to which they are assigned. Normally a cadet with both congressional and non-congressional nominations is assigned to a congressional authority. Designation of "charged" cadets (those filling a Vice-Presidential, congressional, or U.S. Possessions quota) also is accomplished by USAFA/RRS according to §901.18. USAFA/RRS notifies HQ USAF/DPPA of these assignments which are audited and verified by HQ USAF/DPPA. The Vice Presidential and nominating authorities in Congress and U.S. Possessions are notified of their charged appointees and other nominees who win appointments by HQ USAF/DPPA.

§901.28 OMB approval of information collection requirements.

The information collection requirements in this part 901 have been approved by the Office of Management and Budget under control numbers 0701–0026, 0701–0063, 0701–0064, 0701–0066 and 0701–0087.

PART 903—AIR FORCE ACADEMY PREPARATORY SCHOOL

Sec.

903.1 Mission and responsibilities.
903.2 Eligibility requirements.
903.3 Selection criteria.
903.4 Application process and procedures.
903.5 Reserve enlistment procedures.
903.6 Reassignment of Air Force members to become cadet candidates at the preparatory school.
903.7 Reassignment of cadet candidates who graduate from the preparatory school with an appointment to U.S. Air Force Academy (USAFA).
903.8 Cadet candidate disenrollment.
903.9 Cadet records and reassignment forms.
903.10 Information collections, records, and forms or information management tools (IMTS).

AUTHORITY: 5 U.S.C. 301, 10 U.S.C. 8013, and 10 U.S.C. 9331 unless otherwise noted).

SOURCE: 73 FR 7456, Feb. 21, 2008, unless otherwise noted.

NOTE: This part is derived from AFI 36–2021, September 12, 2006. Part 806 of this chapter states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the material referenced herein.

§903.1 Mission and responsibilities.

(a) Mission. To motivate, prepare, and evaluate selected candidates in an educational, military, moral, and physical environment, to perform successfully and enhance diversity at USAFA.

(b) Responsibilities:

(1) Superintendent, USAFA (HQ USAFA/CC). Ensures adequate oversight of HQ USAFA/PL activities, administration, and resources. Means of oversight include but are not limited to:

(i) United States Air Force Academy Instruction (USAFAI) 36–3502, USAFA Assessment Board.

(ii) The Preparatory School Advisory Committee, as established in USAFAI 36–2013, Superintendent's Preparatory School Advisory Committee of the USAF Academy Preparatory School.

(iii) Annual Assessment, as established in Department of Defense (DoD) Directive 1322.22, Service Academies.

(iv) Audits, Eagle Looks, and Unit Compliance Inspections.

(v) Special reviews and investigations as directed by HQ USAF.

(vi) USAFA Board of Visitors (BoV).

(2) HQ USAFA/PL Commander:

(i) Ensures the education and training programs satisfy the school's mission.

(ii) Informs HQ USAFA/RR of candidates' names, including essential categories, when each class enters.

(iii) Administers the disenrollment process. Notifies the Headquarters USAFA Superintendent (HQ USAFA/CC), and HQ USAFA/RR of all disenrollments.

(iv) Responsible, along with ARPC, for administering the oath of enlistment on the date of inprocessing. The effective date of enlistment is the date the applicant took the oath.

(3) Air Reserve Personnel Center (ARPC):

(i) Receives DD Form 1966, Record of Military Processing–Armed Forces of the United States, from select candidates upon inprocessing.

(ii) Reviews the DD Form 1966 for completion/acceptance.

(iii) Completes the DD Form 4, Enlistment/Reenlistment Document Armed Forces of the United States, if DD Form 1966 is in order.

(iv) Responsible, along with USAFA/PL, for administering the oath of enlistment on the date of inprocessing. The effective date of enlistment is the date the applicant took the oath.

(v) Publishes reserve orders placing applicant on active duty for the purpose of attending Preparatory school. Preparatory school determines the date of call to active duty (usually date administered the oath). ARPC provides copies of orders to MPF on the date of inprocessing.

(4) 10th Mission Support Squadron Military Personnel (10 MSS/DPM):

(i) Ensures Regular and Reserve Air Force personnel reassigned to the HQ USAFA/PL enter with the highest grade they had achieved as of their date of enrollment and retain their date of rank or effective date.

(ii) Maintains records on Cadet Candidates.

(iii) Processes separation orders for non-prior service members who complete the HQ USAFA/PL and accept an appointment to a U.S. Service Academy.

(iv) Prepares discharge orders for non-prior service members who are disenrolled or do not accept appointment to a U.S. Service Academy.

(v) Issues ID cards.

(5) Headquarters USAFA Admissions (HQ USAFA/RR):

(i) Notifies cadet candidates of their acceptance into HQ USAFA/PL. Includes an accept-or-decline form with acceptance letter and asks cadet candidates to return the form as soon as possible.

(ii) Issues "Invitation to Travel" letters to all accepted cadet candidates (including civilians, reservist and members of other services) inviting them to travel to the HQ USAFA/PL, enlist in the Air Force Reserve (if necessary), and attend the HQ USAFA/PL.

(iii) Sends a notice to non-selected service personnel and their servicing Military Personnel Flight (MPF). *Note:* The Air Force does not typically notify civilian applicants of their non-selection.

(iv) Provides 10 MSS/DPMA with the name, grade, social security number, mailing address, and unit of assignment for reassignment of all applicants on Air Force active duty who are accepted into HQ USAFA/PL.

(v) Sends DODMERB a data file listing all applicants that need a medical examination. DODMERB uses the data file to schedule necessary exams.

(6) Unit commanders of all Regular and Reserve Component Air Force personnel applying to the HQ USAFA/PL:

(i) Review each applicant's completed AF Form 1786, Application for Appointment to the United States Air Force Academy Under Quota Allotted to Enlisted Members of the Regular and Reserve Components of the Air Force, and determine if the applicant meets eligibility requirements.

(ii) Forward an endorsement of all applicants who meet eligibility requirements, together with AF Form 1786, through the MPF to: Headquarters USAFA Admission Selections (HQ USAFA/RRS), 2304 Cadet Drive, USAF Academy CO 80840–5025. The endorsement must include a comprehensive statement of the applicant's character, ability, and motivation to become a career officer. Verify statements in applications regarding service

component, length of service, and date of birth from official records.

(iii) Notify HQ USAFA/RR immediately on determining that an applicant is no longer recommended for selection to the HQ USAFA/PL.

(7) Unit commanders of Regular or Reserve members of the Army, Navy, or Marine Corps and unit commanders of Army or Air National Guard members:

(i) Accept letters of application to the HQ USAFA/PL from unit personnel.

(ii) Complete an endorsement for all applicants who meet the eligibility requirements. Include in the endorsement a comprehensive statement of the applicant's character, ability, and motivation to become a career officer. Verify statements in applications regarding service component, length of service, and date of birth from official records. Send the endorsement and letter of application to HQ USAFA/RRS, 2304 Cadet Drive, USAF Academy CO 80840–5025.

(iii) Ensure that each applicant receives a release from active duty to attend the HQ USAFA/PL before sending the endorsement. In order to facilitate the accession of a National Guard (Air or Army) member into USAFA or HQ USAFA/PL, a DD Form 368, Request for Conditional Release, or AF Form 1288, Application for Ready Reserve Assignment, should be accomplished and forwarded to the losing Military Personnel Flight (MPF) service for outprocessing. Once the member has enlisted the 10 MSS/DPM will contact the losing MPF. A copy of the DD Form 4 and orders will be provided to the losing ANG MPF by fax. In turn, the losing MPF will project the member's record in MilPDS based on the gaining PAS provided by the 10 MSS/DPM.

(iv) Notify HQ USAFA/RR immediately on determining that an applicant is no longer recommended for selection to the HQ USAFA/PL.

§903.2 Eligibility requirements.

(a) For admission to the HQ USAFA/PL, applicants must be:

(1) At least 17 and no more than 22 years old by 1 July of the year of admission.

(2) A citizen or permanent resident of the United States able to obtain citizenship (or Secretary of Defense waiver allowed by 10 U.S.C. 532(f)) by projected commissioning date.

(3) Unmarried and have no dependents.

(4) Of high moral character. Applicants must have no record of Uniform Code of Military Justice convictions or civil offenses beyond minor violations; no history of drug or alcohol abuse; and no prior behaviors, activities, or associations incompatible with USAF standards.

(5) Medically qualified for appointment to the U.S. Air Force Academy (USAFA).

(6) A member of the armed services or eligible to enlist in the U.S. Air Force Reserve.

(b) Normally, applicants must not have previously attended college on a full-time basis or attended a U.S. Service Academy or a U.S. Service Academy Preparatory School. The Headquarters USAFA Registrar's Office (HQ USAFA/RR) determines an applicant's status in this regard.

(c) Every applicant must be an active candidate in the USAFA admissions program, normally through one of following:

(1) Nominated by a source specified in public law.

(2) Identified by the USAFA as fulfilling institutional needs.

(d) Members of the Air Force Reserve or Air National Guard (ANG) must agree to active duty service if admitted to the HQ USAFA/PL. Admitted ANG personnel first transfer to the Air Force Reserves before leaving their place of residence and being called to active duty.

(e) Regular and reserve members of the Armed Forces and the National Guard must have completed basic training.

(f) Regular members of the Armed Forces must have at least 1 year retainability when they enter the HQ USAFA/PL.

§903.3 Selection criteria.

(a) Cadet candidates for the HQ USAFA/PL are selected on the basis of demonstrated character, test scores, medical examination, prior academic

record, recommendation of the organization commander (if prior service), and other similar reports or records. USAFA is authorized to make selections IAW SECAF guidance including but not limited to selection from among enlisted personnel and recruited athletes. Each applicant must:

(1) Achieve satisfactory scores on the Scholastic Aptitude Test (SAT) or the American College Testing Program (ACT).

(2) Take and pass a medical evaluation administered through the Department of Defense Medical Evaluation Review Board (DODMERB).

(3) Have an acceptable academic record as determined by HQ USAFA/RR. Each applicant must furnish a certified transcript from each high school or civilian preparatory school attended. Applicants should send transcripts to HQ USAFA/RR, 2304 Cadet Drive, Suite 200, USAF Academy CO 80840–5025.

(4) Take the Candidate Fitness Assessment.

(b) HQ USAFA/RR oversees the holistic review of each viable candidate's record by a panel. This holistic review may include consideration of factors that would enhance diversity at USAFA, such as unique academic abilities, language skills, demonstrated leadership skills, foreign cultural knowledge, athletic prowess, flying aptitude, uncommon life experiences, demonstrated moral or physical courage or other performance-based factors.

(c) HQ USAFA/RR also examines reports and records that indicate an applicant's aptitude, achievement, or ability to graduate from the HQ USAFA/PL in the selection process.

(d) HQ USAFA/RR includes Preparatory School selection guidelines in the "Criteria and Procedures for Air Force Academy Appointment, Class of 20XX" (Contract) and submits for Superintendent approval.

(e) For members of the Armed Forces and the National Guard, HQ USAFA/RR also considers letters of recommendation from applicants' unit commanders.

§ 903.4 Application process and procedures.

(a) Regular and Reserve members of the Air Force must send their applications to: HQ USAFA/RR, 2304 Cadet Dr, Suite 200, USAF Academy CO 80840–5025, no later than 31 January for admission the following summer. Those otherwise nominated to the Air Force Academy must complete all steps of admissions by 15 April.

(b) Regular and Reserve members of the Air Force must complete AF Form 1786 and submit it to their unit commander.

(c) Regular and Reserve members of the Army, Navy, or Marine Corps, as well as members of the National Guard, must submit a letter of application through their unit commander.

(d) Civil Air Patrol (CAP) cadets send their applications to HQ USAFA/RR and must apply to CAP National Headquarters by 31 January for nomination.

(e) HQ USAFA/RR automatically considers civilian candidates for admission who have a nomination to the USAFA, but were not selected.

§ 903.5 Reserve enlistment procedures.

(a) Civilians admitted to the HQ USAFA/PL take the oath of enlistment on the date of their initial in-processing at the HQ USAFA/PL. Their effective date of enlistment is the date they take this oath.

(b) Civilians who enlist for the purpose of attending the HQ USAFA/PL will be awarded the rank of E–1. These cadet candidates are entitled to the monthly student pay at the same rate as USAFA cadets according to United States Code Title 37, Section 203.

§ 903.6 Reassignment of Air Force members to become cadet candidates at the preparatory school.

USAFA Preparatory School Enrollment for members selected from operational Air Force:

Selected Regular Air Force members at technical training schools remain there in casual status until the earliest reporting date for the HQ USAFA/PL. Students must not leave their training school without coordinating with HQ USAFA/RR.

§ 903.7 Reassignment of cadet candidates who graduate from the preparatory school with an appointment to USAFA.

USAFA Cadet Enrollment for Cadet Candidates who graduate from the Prepatory School with an appointment to the USAFA:

(a) The Air Force releases cadet candidates entering the USAFA from active duty and reassigns them to active duty as Air Force Academy cadets, effective on their date of entry into the USAFA in accordance with one of these authorities:

(1) The Department of Air Force letter entitled Members of the Armed Forces Appointed to a Service Academy, 8 July 1957.

(2) Title 10, United States Code, Sections 516 and 523. Air Force Instruction (AFI) 36–3208, Administrative Separation of Airmen.

(b) The Air Force discharges active Reserve cadet candidates who enlisted for the purpose of attending the HQ USAFA/PL in accordance with AFI 36–3208 and reassigns them to active duty as Air Force Academy cadets, effective on their date of entry into the USAFA.

§ 903.8 Cadet candidate disenrollment.

(a) In accordance with AFI 36–3208, the Commander, HQ USAFA/PL, may disenroll a student who:

(1) Fails to meet and maintain HQ USAFA/PL educational, military, character, or physical fitness standards.

(2) Fails to demonstrate adaptability and suitability for participation in USAFA educational, military, character, or physical training programs.

(3) Displays unsatisfactory conduct.

(4) Fails to meet statutory requirements for admission to the USAFA, for example:

(i) Marriage or acquiring legal dependents.

(ii) Medical disqualification.

(iii) Refusal to serve as a commissioned officer in the U.S. Armed Forces.

(5) Requests disenrollment.

(b) The HQ USAFA/PL commander may also disenroll a student when it is determined that the student's retention is not in the best interest of the Government.

(c) The military personnel flight (10 MSS/DPM) processes Regular Air Force members for reassignment if:

(1) They are disenrolled from the HQ USAFA/PL.

(2) They fail to obtain or accept an appointment to a U.S. Service Academy.

(d) The Air Force reassigns Air Force Reserve cadet candidates who are disenrolled from the HQ USAFA/PL or who fail to obtain or accept an appointment to an U.S. Service Academy in either of two ways under AFI 36–3208:

(1) Discharges them from the United States Air Force without any further military obligation if they were called to active duty solely to attend the HQ USAFA/PL.

(2) Releases them from active duty and reassigns them to the Air Force Reserve Personnel Center if they were released from Reserve units to attend the HQ USAFA/PL.

(e) The National Guard (Army or Air Force) releases cadet candidates from active duty and reassigns them to their State Adjutant General.

(f) The Air Force reassigns Regular and Reserve personnel from other Services back to their unit of origin to complete any prior service obligation if:

(1) They are disenrolled from the HQ USAFA/PL.

(2) They fail to obtain or accept an appointment to the USAFA.

§ 903.9 Cadet records and reassignment forms.

(a) Headquarters USAFA Cadet Personnel (HQ USAFA/DPY) maintains records of cadet candidates who enter the USAFA until they are commissioned or disenrolled.

(b) 10 MSS/DPM will send records of Regular Air Force personnel who enter one of the other Service Academies to HQ Air Force Personnel Center (HQ AFPC) for processing.

§ 903.10 Information collections, records, and forms or information management tools (IMTS).

(a) Information Collections. No information collections are created by this publication.

(b) Records. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with AFMAN 37–123, Management of Records, and disposed of in accordance with the Air Force Records Disposition Schedule (RDS) located at *https://webrims.amc.af.mil*.

(c) Forms or IMTs (Adopted and Prescribed).

(1) Adopted Forms or IMTs: AF IMT 847, Recommendation for Change of Publication. AF Form 1288, Application for Ready Reserve Assignment, AF Form 1786, Application for Appointment to the USAF Academy Under Quota Allotted to Enlisted Members of the Regular and Reserve Components of the Air Force, DD Form 4, Enlistment/Reenlistment Document-Armed Forces of the United States, DD Form 368, Request for Conditional Release, and DD Form 1966, Record of Military Processing-Armed Forces of the United States.

(2) Prescribed Forms or IMTs: No forms or IMTs are prescribed by this publication

SUBCHAPTERS L–M [RESERVED]

SUBCHAPTER N—TERRITORIAL AND INSULAR REGULATIONS

PART 935—WAKE ISLAND CODE

Subpart A—General

Sec.
935.1 Applicability.
935.2 Purpose.
935.3 Definitions.
935.4 Effective date.

Subpart B—Civil Administration Authority

935.10 Designation and delegation of authority.
935.11 Permits.
935.12 Functions, powers, and duties.
935.13 Revocation or suspension of permits and registrations.
935.14 Autopsies.
935.15 Notaries public.
935.16 Emergency authority.

Subpart C—Civil Law

935.20 Applicable law.
935.21 Civil rights, powers, and duties.

Subpart D—Criminal Law

935.30 General.

Subpart E—Petty Offenses

935.40 Criminal offenses.

Subpart F—Penalties

935.50 Petty offenses.
935.51 Motor vehicle violations.
935.52 Violations of Subpart O or P of this part.
935.53 Contempt.

Subpart G—Judiciary

935.60 Wake Island Judicial Authority
935.61 Wake Island Court.
935.62 Island Attorney.
935.63 Public Defender.
935.64 Clerk of the Court.
935.65 Jurisdiction.
935.66 Court of Appeals.
935.67 Clerk of the Court of Appeals.
935.68 Jurisdiction of the Court of Appeals.
935.69 Qualifications and admission to practice.

Subpart H—Statute of Limitations

935.70 Limitation of actions.

Subpart I—Subpoenas, Wake Island Court

935.80 Subpoenas.

Subpart J—Civil Actions

935.90 General.
935.91 Summons.
935.92 Service of complaint.
935.93 Delivery of summons to plaintiff.
935.94 Answer.
935.95 Proceedings; record; judgment.
935.96 Execution of judgment.
935.97 Garnishment.

Subpart K—Criminal Actions

935.100 Bail.
935.101 Seizure of property.
935.102 Information.
935.103 Motions and pleas.
935.104 Sentence after a plea of guilty.
935.105 Trial.

Subpart L—Appeals and New Trials

935.110 Appeals.
935.111 New trial.

Subpart M—Peace Officers

935.120 Authority.
935.121 Qualifications of peace officers.
935.122 Arrests.
935.123 Warrants.
935.124 Release from custody.
935.125 Citation in place of arrest.

Subpart N—Motor Vehicle Code

935.130 Applicability.
935.131 Right-hand side of the road.
935.132 Speed limits.
935.133 Right-of-way.
935.134 Arm signals.
935.135 Turns.
935.136 General operating rules.
935.137 Operating requirements.
935.138 Motor bus operation.
935.139 Motor vehicle operator qualifications.
935.140 Motor vehicle maintenance and equipment.

Subpart O—Registration and Island Permits

935.150 Registration.
935.151 Island permit for boat or vehicle.
935.152 Activities for which permit is required.

Subpart P—Public Safety

935.160 Emergency requirements and restrictions.
935.161 Fire hazards.
935.162 Use of special areas.
935.163 Unexploded ordnance material.
935.164 Boat operations.

935.165 Floating objects.

AUTHORITY: Sec. 48, Pub. L. 86–624, 74 Stat. 424; E.O. 11048, Sept. 1, 1962, 27 FR 8851, 3 CFR, 1959–1963 Comp., p. 632; agreement between the Department of Interior and Department of the Air Force, dated 19 June 1972, 37 FR 12255; and Secretary of the Air Force Order 111.1, dated 26 April 1999.

SOURCE: 67 FR 16999, Apr. 9, 2002, unless otherwise noted.

Subpart A—General

§ 935.1 Applicability.

(a) The local civil and criminal laws of Wake Island consist of this part and applicable provisions of the laws of the United States.

(b) For the purposes of this part, Wake Island includes Wake, Peale, and Wilkes Islands, and the appurtenant reefs, shoals, shores, bays, lagoons, keys, territorial waters, and superadjacent airspace of them.

§ 935.2 Purpose.

The purpose of this part is to provide—

(a) For the civil administration of Wake Island;

(b) Civil laws for Wake Island not otherwise provided for;

(c) Criminal laws for Wake Island not otherwise provided for; and

(d) A judicial system for Wake Island not otherwise provided for.

§ 935.3 Definitions.

In this part—

(a) *General Counsel* means the General Counsel of the Air Force or his successor in office.

(b) *Commander* means the Commander, Wake Island.

(c) *Commander, Wake Island* means the Commander of Pacific Air Forces or such subordinate commissioned officer of the Air Force to whom he may delegate his authority under this part.

(d) *He* or *his* includes both the masculine and feminine genders, unless the context implies otherwise.

(e) *Judge* includes Judges of the Wake Island Court and Court of Appeals.

§ 935.4 Effective date.

This part was originally applicable at 0000 June 25, 1972. Amendments to this part apply April 10, 2002.

Subpart B—Civil Administration Authority

§ 935.10 Designation and delegation of authority.

(a) The civil administration authority at Wake Island is vested in the Secretary of the Air Force. That authority has been delegated to the General Counsel of the Air Force with authority to redelegate all or any part of his functions, powers, and duties under this part to such officers and employees of the Air Force as he may designate, but excluding redelegation of the power to promulgate, amend, or repeal this part, or any part thereof. Such redelegation must be in writing and must be in accordance with any applicable Secretary of the Air Force Orders. Such redelegation may be further redelegated subject to such restrictions as the delegating authority may impose. A redelegation may also be made to a commissioned officer serving in another United States military service who exercises military command, but such redelegation must explicitly and specifically list the powers redelegated and shall not include the power or authority to issue permits, licenses, or other outgrants unless individually approved by the Air Force official who made the redelegation. The Commander is the agent of the Secretary, his delegate and designee when carrying out any function, power, or duty assigned under this part.

(b) The authority of the General Counsel to appoint Judges shall not be delegated.

(c) Judges and officers of the court may not redelegate their powers or authorities except as specifically noted in this part.

§ 935.11 Permits.

(a) Permits in effect on the dates specified in § 935.4 continue in effect until revoked or rescinded by the Commander. Permits issued by the Commander shall conform to the requirements of Air Force Instruction 32–9003 (Available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.). No permit or registration shall be issued under other authority that is inconsistent with this part. The Commander

may issue island permits or registration for—

(1) Businesses, including any trade, profession, calling, or occupation, and any establishment where food or beverages are prepared, offered, or sold for human consumption.

(2) Self-propelled motor vehicles, except aircraft, including attached trailers.

(3) Vehicle operators.

(4) Boats.

(5) Food handlers.

(6) Drugs, narcotics, and poisons.

(7) Construction.

(8) Burials.

(b) To the extent it is not inconsistent with this part, any permit or registration issued pursuant to Air Force directives or instructions as applicable to Wake Island shall constitute a permit or registration under this section, and no other permit or registration shall be required.

§ 935.12 Functions, powers, and duties.

The Commander may—

(a) Appoint Peace Officers;

(b) Direct the abatement of any public nuisance upon failure of any person to comply with a notice of removal;

(c) Direct sanitation and fire prevention inspections;

(d) Establish records of vital statistics;

(e) Direct the registration and inspections of motor vehicles, boats, and aircraft;

(f) Impose quarantines;

(g) Direct the impoundment and destruction of unsanitary food, fish, or beverages;

(h) Direct the evacuation of any person from a hazardous area;

(i) Commission notaries public;

(j) Establish and maintain a facility for the restraint or confinement of persons and provide for their care;

(k) Direct the removal of any person from Wake Island and prohibit his future presence on the island;

(l) Issue traffic regulations that are not inconsistent with this part, and post traffic signs;

(m) Prohibit the posting, distribution, or public display of advertisements, signs, circulars, petitions, or similar materials, soliciting, picketing, or parading in any public place or area if he determines it would interfere with public business or endanger the health and safety of persons and property on Wake Island;

(n) Perform or direct any other acts, not inconsistent with this part or applicable laws and regulations, if he considers it necessary for protection of the health or safety of persons and property on Wake Island; and

(o) Issue any order or notice necessary to implement this section. Any order or notice issued pursuant to Air Force directives and instructions as applicable to Wake Island shall constitute an order or notice issued pursuant to this section.

§ 935.13 Revocation or suspension of permits and registrations.

(a) The Commander may revoke or suspend any island permit or registration for cause, with or without notice.

(b) The holder of any revoked or suspended permit or registration may demand a personal hearing before the Commander within 30 days after the effective date of the revocation or suspension.

(c) If a hearing is demanded, it shall be granted by the Commander within 30 days of the date of demand. The applicant may appear in person and present such documentary evidence as is pertinent. The Commander shall render a decision, in writing, setting forth his reasons, within 30 days thereafter.

(d) If a hearing is not granted within 30 days, a written decision is not rendered within 30 days after a hearing, or the applicant desires to appeal a decision, he may, within 30 days after the latest of any of the foregoing dates appeal in writing to the General Counsel, whose decision shall be final.

§ 935.14 Autopsies.

The medical officer on Wake Island, or any other qualified person under his supervision, may perform autopsies upon authorization of the Commander or a Judge of the Wake Island Court.

§ 935.15 Notaries public.

(a) To the extent he considers there to be a need for such services, the Commander may commission one or more residents of Wake Island as notaries

public. The Commander of Pacific Air Forces may not redelegate this authority.

(b) A person applying for commission as a notary public must be a citizen of the United States and shall file an application, together with evidence of good character and a proposed seal in such form as the Commander requires, with a fee of $50 which shall be deposited in the Treasury as a miscellaneous receipt.

(c) Upon determining there to be a need for such a service and after such investigation as he considers necessary, the Commander may commission an applicant as a notary public. Commissions shall expire 3 years after the date thereof, and may be renewed upon application upon payment of a fee of $25.

(d) Judges and the Clerk of the Wake Island Court and the Island Attorney shall have the general powers of a notary public.

§ 935.16 Emergency authority.

During the imminence and duration of any emergency declared by him, the Commander may perform or direct any acts necessary to protect life and property.

Subpart C—Civil Law

§ 935.20 Applicable law.

Civil acts and deeds taking place on Wake Island shall be determined and adjudicated as provided in this part; and otherwise, as provided in the Act of June 15, 1950 (64 Stat. 217) (48 U.S.C. 644a), according to the laws of the United States relating to such an act or deed taking place on the high seas on board a merchant vessel or other vessel belonging to the United States.

§ 935.21 Civil rights, powers, and duties.

In any case in which the civil rights, powers, and duties of any person on Wake Island are not otherwise prescribed by the laws of the United States or this part, the civil rights, powers, and duties as they obtain under the laws of the State of Hawaii will apply to persons on Wake Island.

Subpart D—Criminal Law

§ 935.30 General.

In addition to any act made criminal in this part, any act committed on Wake Island that would be criminal if committed on board a merchant vessel or other vessel belonging to the United States is a criminal offense and shall be adjudged and punished according to the laws applicable on board those vessels on the high seas.

Subpart E—Petty Offenses

§ 935.40 Criminal offenses.

No person may on Wake Island—

(a) Sell or give an alcoholic beverage manufactured for consumption (including beer, ale, or wine) to any person who is not at least 21 years of age;

(b) Procure for, engage in, aid or abet in, or solicit for prostitution;

(c) Use any building, structure, vehicle, or public lands for the purpose of lewdness, assignation, or prostitution;

(d) Possess or display (publicly or privately) any pornographic literature, film, device, or any matter containing obscene language, that tends to corrupt morals;

(e) Make any obscene or indecent exposure of his person;

(f) Commit any disorderly, obscene, or indecent act;

(g) Commit any act of voyeurism (Peeping Tom);

(h) Enter upon any assigned residential quarters or areas immediately adjacent thereto, without permission of the assigned occupant;

(i) Discard or place any paper, debris, refuse, garbage, litter, bottle, can, human or animal waste, trash, or junk in any public place, except into a receptacle or place designated or used for that purpose;

(j) Commit any act of nuisance;

(k) With intent to provoke a breach of the peace or under such circumstances that a breach of the peace may be occasioned thereby, act in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to any other person;

(l) Be drunk in any public place;

(m) Use any profane or vulgar language in a public place;

(n) Loiter or roam about Wake Island, without any lawful purpose, at late and unusual hours of the night;

(o) Lodge or sleep in any place without the consent of the person in legal possession of that place;

(p) Grossly waste any potable water;

(q) Being a male, knowingly enter any area, building, or quarters reserved for women, except in accordance with established visiting procedures;

(r) Smoke or ignite any fire in any designated and posted "No Smoking" area, or in the immediate proximity of any aircraft or fueling pit;

(s) Enter any airplane parking area or ramp, unless he is on duty therein, is a passenger under appropriate supervision, or is authorized by the Commander to enter that place;

(t) Interfere or tamper with any aircraft or servicing equipment or facility, or put in motion the engine of any aircraft without the permission of its operator;

(u) Post, distribute, or publicly display advertisements, signs, circulars, petitions, or similar materials, or solicit, picket, or parade in any public place or area where prohibited by the Commander pursuant to § 935.12;

(v) Import onto or keep on Wake Island any plant or animal not indigenous to the island, other than military working dogs or a guide dog for the blind or visually-impaired accompanying its owner; or

(w) Import or bring onto or possess while on Wake Island any firearm, whether operated by air, gas, spring, or otherwise, or explosive device, including fireworks, unless owned by the United States.

Subpart F—Penalties

§ 935.50 Petty offenses.

Whoever is found guilty of a violation of any provision of subpart E of this part is subject to a fine of not more than $500 or imprisonment of not more than 6 months, or both.

§ 935.51 Motor vehicle violations.

Whoever is found guilty of a violation of subpart N of this part is subject to a fine of not more than $100, imprisonment of not more than 30 days, or suspension or revocation of his motor vehicle operator's permit, or any combination or all of these punishments.

§ 935.52 Violations of Subpart O or P of this part.

(a) Whoever is found guilty of a violation of subpart O or P of this part is subject to a fine of not more than $100, or imprisonment of not more than 30 days, or both.

(b) The penalties prescribed in paragraph (a) of this section are in addition to and do not take the place of any criminal penalty otherwise applicable and currently provided by the laws of the United States.

§ 935.53 Contempt.

A Judge may, in any civil or criminal case or proceeding, punish any person for disobedience of any order of the Court, or for any contempt committed in the presence of the Court, by a fine of not more than $100, or imprisonment of not more than 30 days, or both.

Subpart G—Judiciary

§ 935.60 Wake Island Judicial Authority.

(a) The judicial authority under this part is vested in the Wake Island Court and the Wake Island Court of Appeals.

(b) The Wake Island Court and the Wake Island Court of Appeals shall each have a seal approved by the General Counsel.

(c) Judges and Clerks of the Courts may administer oaths.

§ 935.61 Wake Island Court.

(a) The trial judicial authority for Wake Island is vested in the Wake Island Court.

(b) The Wake Island Court consists of one or more Judges, appointed by the General Counsel as needed. The term of a Judge shall be for one year, but he may be re-appointed. When the Wake Island Court consists of more than one Judge, the General Counsel shall designate one of the Judges as the Chief Judge who will assign matters to Judges, determine when the Court will sit individually or en banc, and prescribe rules of the Court not otherwise provided for in this Code. If there is only one Judge appointed, that Judge shall be the Chief Judge.

(c) Sessions of the Court are held on Wake Island or Hawaii at times and places designated by the Chief Judge.

§ 935.62 Island Attorney.

There is an Island Attorney, appointed by the General Counsel as needed. The Island Attorney shall serve at the pleasure of the General Counsel. The Island Attorney represents the United States in the Wake Island Court and in the Wake Island Court of Appeals.

§ 935.63 Public Defender.

There is a Public Defender, appointed by the General Counsel as needed. The Public Defender shall serve at the pleasure of the General Counsel. The Public Defender represents any person charged with an offense under this part who requests representation and who is not able to afford his own legal representation.

§ 935.64 Clerk of the Court.

There is a Clerk of the Court, who is appointed by the Chief Judge. The Clerk shall serve at the pleasure of the Chief Judge. The Clerk maintains a public docket containing such information as the Chief Judge may prescribe, administers oaths, and performs such other duties as the Court may direct. The Clerk is an officer of the Court.

§ 935.65 Jurisdiction.

(a) The Wake Island Court has jurisdiction over all offenses under this part and all actions of a civil nature, cognizable at law or in equity, where the amount in issue is not more than $1,000, exclusive of interests and costs, but not including changes of name or domestic relations matters.

(b) The United States is not subject to suit in the Court.

(c) The United States may intervene in any matter in which the Island Attorney determines it has an interest.

§ 935.66 Court of Appeals.

(a) The appellate judicial authority for Wake Island is vested in the Wake Island Court of Appeals.

(b) The Wake Island Court of Appeals consists of a Chief Judge and two Associate Judges, appointed by the General Counsel as needed. The term of a judge shall be for one year, but he may be reappointed. The Chief Judge assigns matters to Judges, determines whether the Court sits individually or en banc, and prescribes rules of the Court not otherwise provided for in this part.

(c) Sessions of the Court of Appeals are held in the National Capital Region at times and places designated by the Chief Judge. The Court may also hold sessions at Wake Island or in Hawaii.

(d) A quorum of the Court of Appeals will consist of one Judge when sitting individually and three Judges when sitting en banc.

(e) The address of the Court of Appeals is—Wake Island Court of Appeals, SAF/GC, Room 4E856, 1740 Air Force Pentagon, Washington, DC 20330–1740.

§ 935.67 Clerk of the Court of Appeals.

There is a Clerk of the Court of Appeals, who is appointed by the Chief Judge. The Clerk serves at the pleasure of the Chief Judge. The Clerk maintains a public docket containing such information as the Chief Judge may prescribe, administers oaths, and performs such other duties as the Court directs. The Clerk is an officer of the Court.

§ 935.68 Jurisdiction of the Court of Appeals.

The Court of Appeals has jurisdiction over all appeals from the Wake Island Court.

§ 935.69 Qualifications and admission to practice.

(a) No person may be appointed a Judge, Island Attorney, or Public Defender under this part who is not a member of the bar of a State, Commonwealth, or Territory of the United States or of the District of Columbia.

(b) Any person, other than an officer or employee of the Department of the Air Force, appointed as a Judge, Island Attorney, Public Defender, or to any other office under this part shall, prior to entering upon the duties of that office, take an oath, prescribed by the General Counsel, to preserve, protect, and defend the Constitution of the United States. Such oath may be administered by any officer or employee of the Department of the Air Force.

(c) Civilian officers and employees of the Department of the Air Force may be appointed as a Judge, Island Attorney, Public Defender, or Clerk, as an additional duty and to serve without additional compensation. Officers and employees of the Department of the Air Force, both civilian and military, who serve in positions designated as providing legal services to the Department and who are admitted to practice law in an active status before the highest court of a State, Commonwealth, or territory of the United States, or of the District of Columbia, and are in good standing therewith, are admitted to the Bar of the Wake Island Court and the Wake Island Court of Appeals.

(d) No person may practice law before the Wake Island Court or the Wake Island Court of Appeals who is not admitted to Bar of those courts. Any person admitted to practice law in an active status before the highest court of a State, Commonwealth, or territory of the United States, or of the District of Columbia, and in good standing therewith, may be admitted to the Bar of the Wake Island Court and the Wake Island Court of Appeals. Upon request of the applicant, the Court, on its own motion, may grant admission. A grant of admission by either court constitutes admission to practice before both courts.

Subpart H—Statute of Limitations

§ 935.70 Limitation of actions.

(a) No civil action may be filed more than 1 year after the cause of action arose.

(b) No person is liable to be tried under this part for any offense if the offense was committed more than 1 year before the date the information or citation is filed with the Clerk of the Wake Island Court.

Subpart I—Subpoenas, Wake Island Court

§ 935.80 Subpoenas.

(a) A Judge or the Clerk of the Court shall issue subpoenas for the attendance of witnesses. The subpoena must include the name of the Court and the title, if any, of the proceeding; and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The Clerk may issue a subpoena for a party requesting it, setting forth the name of the witness subpoenaed.

(b) A Judge or the Clerk may also issue a subpoena commanding the person to whom it is directed to produce the books, papers, documents, or other objects designated therein. The Court may direct that books, papers, documents, or other objects designated in the subpoena be produced before the Court at a time before the trial or before the time when they are to be offered into evidence. It may, upon their production, allow the books, papers, documents, or objects or portions thereof to be inspected by the parties and their representatives.

(c) Any peace officer or any other person who is not a party and who is at least 18 years of age may serve a subpoena. Service of a subpoena shall be made by delivering a copy thereof to the person named.

(d) The Clerk of the Court shall assess and collect a witness fee of $40 for each subpoena requested by any party other than the United States, which shall be tendered to the witness as his witness fee together with service of the subpoena. Witnesses subpoenaed by the Island Attorney shall be entitled to a fee of $40 upon presentment of a proper claim therefor on the United States. No duly summoned witness may refuse, decline, or fail to appear or disobey a subpoena on the ground that the witness fee was not tendered or received.

(e) Upon a showing that the evidence is necessary to meet the ends of justice and that the defendant is indigent, the Public Defender may request the Court to direct the Island Attorney to obtain the issuance of a subpoena on behalf of a defendant in a criminal case. Witnesses so called on behalf of the defendant shall be entitled to the same witness fees as witnesses requested by the Island Attorney.

(f) Subpoenas may be credited only to persons or things on Wake Island.

(g) No person who is being held on Wake Island because of immigration status shall be entitled to a witness

fee, but shall nevertheless be subject to subpoena like any other person.

Subpart J—Civil Actions

§ 935.90 General.

(a) The Federal Rules of Civil Procedure (28 U.S.C.) apply to civil actions in the Court to the extent the presiding Judge considers them applicable under the circumstances.

(b) There is one form of action called the "Civil Action."

(c) Except as otherwise provided for in this part, there is no trial by jury.

(d) A civil action begins with the filing of a complaint with the Court. The form of the complaint is as follows except as it may be modified to conform as appropriate to the particular action:

IN THE WAKE ISLAND COURT

[Civil Action No. _____]
_____ (*Plaintiff*) vs. _____, (*Defendant*)

Complaint

_____ plaintiff alleges that the defendant is indebted to plaintiff in the sum of $_____; that plaintiff has demanded payment of said sum; that defendant has refused to pay; that defendant resides at _____ on Wake Island; that plaintiff resides at _____.

§ 935.91 Summons.

Upon the filing of a complaint, a Judge or Clerk of the Court shall issue a summons in the following form and deliver it for service to a peace officer or other person specifically designated by the Court to serve it:

IN THE WAKE ISLAND COURT

[Civil Action No. _____]
_____ (*Plaintiff*), vs. _____ (*Defendant*)

Summons

To the above-named defendant:

You are hereby directed to appear and answer the attached cause at _____ on _____ day of _____ 20—, at _____ -.M. and to have with you all books, papers, and witnesses needed by you to establish any defense you have to said claim.

You are further notified that in case you do not appear, judgment will be given against you, for the amount of said claim, together with cost of this suit and the service of this order.

Dated: _____, 20 _____. (Clerk, Wake Island Court) _____

§ 935.92 Service of complaint.

(a) A peace officer or other person designated by the Court to make service shall serve the summons and a copy of the complaint at Wake Island upon the defendant personally, or by leaving them at his usual place of abode with any adult residing or employed there.

(b) In the case of a corporation, partnership, joint stock company, trading association, or other unincorporated association, service may be made at Wake Island by delivering a copy of the summons and complaint to any of its officers, a managing or general agent, or any other agent authorized by appointment or by law to receive service.

§ 935.93 Delivery of summons to plaintiff.

The Clerk of the Court shall promptly provide a copy of the summons to the plaintiff, together with notice that if the plaintiff fails to appear at the Court at the time set for the trial, the case will be dismissed. The trial shall be set at a date that will allow each party at least 7 days, after the pleadings are closed, to prepare.

§ 935.94 Answer.

(a) The defendant may, at his election, file an answer to the complaint.

(b) The defendant may file a counterclaim, setoff, or any reasonable affirmative defense.

(c) If the defendant elects to file a counterclaim, setoff, or affirmative defense, the Court shall promptly send a copy of it to the plaintiff.

§ 935.95 Proceedings; record; judgment.

(a) The presiding Judge is responsible for the making of an appropriate record of each civil action.

(b) All persons shall give their testimony under oath or affirmation. The Chief Judge shall prescribe the oath and affirmation that may be administered by any Judge or the Clerk of the Court.

(c) Each party may present witnesses and other forms of evidence. In addition, the presiding Judge may informally investigate any controversy, in

or out of the Court, if the evidence obtained as a result is adequately disclosed to all parties. Witnesses, books, papers, documents, or other objects may be subpoenaed as provided for in § 935.80 for criminal cases.

(d) The Court may issue its judgment in writing or orally from the bench. However, if an appeal is taken from the judgment, the presiding Judge shall, within 10 days after it is filed, file a memorandum of decision as a part of the record. The Judge shall place in the memorandum findings of fact, conclusions of law, and any comments that he considers will be helpful to a thorough understanding and just determination of the case on appeal.

§ 935.96 Execution of judgment.

(a) If, after 60 days after the date of entry of judgment (or such other period as the Court may prescribe), the judgment debtor has not satisfied the judgment, the judgment creditor may apply to the Court for grant of execution on the property of the judgment debtor.

(b) Upon a writ issued by the Court, any peace officer may levy execution on any property of the judgment debtor except—

(1) His wearing apparel up to a total of $300 in value;

(2) His beds, bedding, household furniture and furnishings, stove, and cooking utensils, up to a total of $300 in value; and

(3) Mechanics tools and implements of the debtor's trade up to a total of $200 in value.

(c) Within 60 days after levy of execution, a peace officer shall sell the seized property at public sale and shall pay the proceeds to the Clerk of the Court. The Clerk shall apply the proceeds as follows:

(1) First, to the reasonable costs of execution and sale and court costs.

(2) Second, to the judgment.

(3) Third, the residue (if any) to the debtor.

(d) In any case in which property has been seized under a writ of execution, but not yet sold, the property seized shall be released upon payment of the judgment, court costs, and the costs of execution.

§ 935.97 Garnishment.

(a) If a judgment debtor fails to satisfy a judgment in full within 60 days after the entry of judgment (or such other period as the Court may prescribe), the Court may, upon the application of the judgment creditor issue a writ of garnishment directed to any person having money or property in his possession belonging to the judgment debtor or owing money to the judgment debtor. The following are exempt from judgment:

(1) Ninety percent of so much of the gross wages as does not exceed $200 due to the judgment debtor from his employer.

(2) Eighty percent of so much of the gross wages as exceeds $200 but does not exceed $500 due to the judgment debtor from his employer.

(3) Fifty percent of so much of the gross wages as exceeds $500 due to the judgment debtor from his employer.

(b) The writ of garnishment shall be served on the judgment debtor and the garnishee and shall direct the garnishee to pay or deliver from the money or property owing to the judgment debtor such money or property as the Court may prescribe.

(c) The garnished amount shall be paid to the Clerk of the Court, who shall apply it as follows:

(1) First, to satisfy the costs of garnishment and court costs.

(2) Second, to satisfy the judgment.

(3) Third, the residue (if any) to the judgment debtor.

(d) Funds of the debtor held by the United States are not subject to garnishment.

Subpart K—Criminal Actions

§ 935.100 Bail.

(a) A person who is arrested on Wake Island for any violation of this part is entitled to be released on bail in an amount set by a Judge or Clerk of the Court, which may not exceed the maximum fine for the offense charged. If the defendant fails to appear for arraignment, trial or sentence, or otherwise breaches any condition of bail, the Court may direct a forfeiture of the whole or part of the bail and may on motion after notice to the surety or

sureties, if any, enter a judgment for the amount of the forfeiture.

(b) The Chief Judge of the Wake Island Court may prescribe a schedule of bail for any offense under this part which the defendant may elect to post and forfeit without trial, in which case the Court shall enter a verdict of guilty and direct forfeiture of the bail.

(c) Bail will be deposited in cash with the Clerk of the Court.

§ 935.101 Seizure of property.

Any property seized in connection with an alleged offense (unless the property is perishable) is retained pending trial in accordance with the orders of the Court. The property must be produced in Court, if practicable. At the termination of the trial, the Court shall restore the property or the funds resulting from the sale of the property to the owner, or make such other proper order as may be required and incorporate its order in the record of the case. Any item used in the commission of the offense, may, upon order of the Court, be forfeited to the United States. All contraband, which includes any item that is illegal for the owner to possess, shall be forfeited to the United States; such forfeiture shall not relieve the owner from whom the item was taken from any costs or liability for the proper disposal of such item.

§ 935.102 Information.

(a) Any offense may be prosecuted by a written information signed by the Island Attorney. However, if the offense is one for which issue of a citation is authorized by this part and a citation for the offense has been issued, the citation serves as an information.

(b) A copy of the information shall be delivered to the accused, or his counsel, as soon as practicable after it is filed.

(c) Each count of an information may charge one offense only and must be particularized sufficiently to identify the place, the time, and the subject matter of the alleged offense. It shall refer to the provision of law under which the offense is charged, but any error in this reference or its omission may be corrected by leave of Court at any time before sentence and is not grounds for reversal of a conviction if the error or omission did not mislead the accused to his prejudice.

§ 935.103 Motions and pleas.

(a) Upon motion of the accused at any time after filing of the information or copy of citation, the Court may order the prosecutor to allow the accused to inspect and copy or photograph designated books, papers, documents, or tangible objects obtained from or belonging to the accused, or obtained from others by seizure or process, upon a showing that the items sought may be material to the preparation of his defense and that the request is reasonable.

(b) When the Court is satisfied that it has jurisdiction to try the accused as charged, it shall require the accused to identify himself and state whether or not he has counsel. If he has no counsel, but desires counsel, the Court shall give him a reasonable opportunity to procure counsel.

(c) When both sides are ready for arraignment, or when the Court determines that both sides have had adequate opportunities to prepare for arraignment, the Court shall read the charges to the accused, explain them (if necessary), and, after the reading or stating of each charge in Court, ask the accused whether he pleads "guilty" or "not guilty". The Court shall enter in the record of the case the plea made to each charge.

(d) The accused may plead "guilty" to any or all of the charges against him, except that the Court may in its discretion refuse to accept a plea of guilty, and may not accept a plea without first determining that the plea is made voluntarily with understanding of the nature of the charge.

(e) The accused may plead "not guilty" to any or all of the charges against him. The Court shall enter a plea of not guilty if the answer of the accused to any charge is such that it does not clearly amount to a plea of guilty or not guilty.

(f) The accused may, at any stage of the trial, with the consent of the Court, change a plea of not guilty to one of guilty. The Court shall then proceed as if the accused had originally pleaded guilty.

§935.104 Sentence after a plea of guilty.

If the Court accepts a plea of guilty to any charge or charges, it shall make a finding of guilty on that charge. Before imposing sentence, the Court shall hear such statements for the prosecution and defense, if any, as it requires to enable it to determine the sentence to be imposed. The accused or his counsel may make any reasonable statement he wishes in mitigation or of previous good character. The prosecution may introduce evidence in aggravation, or of bad character if the accused has introduced evidence of good character. The Court shall then impose any lawful sentence that it considers proper.

§935.105 Trial.

(a) If the accused pleads not guilty, he is entitled to a trial on the charges in accordance with procedures prescribed in the Rules of Criminal Procedure for the U.S. District Courts (18 U.S.C.), except as otherwise provided for in this part, to the extent the Court considers practicable and necessary to the ends of justice. There is no trial by jury.

(b) All persons shall give their testimony under oath or affirmation. The Chief Judge shall prescribe the oath and affirmation that may be administered by any Judge or the Clerk of the Court.

(c) Upon completion of the trial, the Court shall enter a judgment consisting of a finding or findings and sentence or sentences, or discharge of the accused.

(d) The Court may suspend any sentence imposed, may order the revocation of any Island automobile permit in motor vehicle cases, and may place the accused on probation. It may delay sentencing pending the receipt of any presentencing report ordered by it.

Subpart L—Appeals and New Trials

§935.110 Appeals.

(a) Any party to an action may, within 15 days after judgment, appeal an interlocutory order, issue of law, or judgment, except that an acquittal may not be appealed, by filing a notice of appeal with the Clerk of the Wake Island Court and serving a copy on the opposing party. Judgment is stayed while the appeal is pending.

(b) Upon receiving a notice of appeal with proof of service on the opposing party, the Clerk shall forward the record of the action to the Wake Island Court of Appeals.

(c) The appellant shall serve on the opposing party and file a memorandum setting forth his grounds of appeal with the Wake Island Court of Appeals within 15 days after the date of the judgment. The appellee may serve and file a reply memorandum within 15 days thereafter. An appeal and the reply shall be deemed to be filed when deposited in the U.S. mail with proper postage affixed, addressed to the Clerk, Wake Island Court of Appeals, at his address in Washington, DC. The period for filing an appeal may be waived by the Court of Appeals when the interests of justice so require.

(d) The Court of Appeals may proceed to judgment on the record, or, if the Court considers that the interests of justice so require, grant a hearing.

(e) The decision of the Court of Appeals shall be in writing and based on the record prepared by the Wake Island Court, on the proceedings before the Court of Appeals, if any be had, and on any memoranda that are filed. If the Court of Appeals considers the record incomplete, the case may be remanded to the Wake Island Court for further proceedings.

(f) The decision of the Court of Appeals is final.

§935.111 New trial.

A Judge of the Wake Island Court may order a new trial as required in the interest of justice, or vacate any judgment and enter a new one, on motion made within a reasonable time after discovery by the moving party of matters constituting the grounds upon which the motion for new trial or vacation of judgment is made.

Subpart M—Peace Officers

§935.120 Authority.

Peace officers—

(a) Have the authority of a sheriff at common law;

(b) May serve any process on Wake Island that is allowed to be served under a Federal or State law; the officer serving the process shall execute any required affidavit of service;

(c) May conduct sanitation or fire prevention inspections;

(d) May inspect motor vehicles, boats, and aircraft;

(e) May confiscate property used in the commission of a crime;

(f) May deputize any member of the Air Force serving on active duty or civilian employee of the Department of the Air Force to serve as a peace officer;

(g) May investigate accidents and suspected crimes;

(h) May direct vehicular or pedestrian traffic;

(i) May remove and impound abandoned or unlawfully parked vehicles, boats, or aircraft, or vehicles, boats, or aircraft interfering with fire control apparatus or ambulances;

(j) May take possession of property lost, abandoned, or of unknown ownership;

(k) May enforce quarantines;

(l) May impound and destroy food, fish, or beverages found unsanitary;

(m) May be armed;

(n) May exercise custody over persons in arrest or confinement;

(o) May issue citations for violations of this part; and

(p) May make arrests, as provided for in § 935.122.

§ 935.121 Qualifications of peace officers.

Any person appointed as a peace officer must be a citizen of the United States and have attained the age of 18 years. The following persons, while on Wake Island on official business, shall be deemed peace officers: special agents of the Air Force Office of Special Investigations, members of the Air Force Security Forces, agents of the Federal Bureau of Investigation, United States marshals and their deputies, officers and agents of the United States Secret Service, agents of the United States Bureau of Alcohol, Tobacco, and Firearms, agents of the United States Customs Service, and agents of the United States Immigration and Naturalization Service.

§ 935.122 Arrests.

(a) Any person may make an arrest on Wake Island, without a warrant, for any crime (including a petty offense) that is committed in his presence.

(b) Any peace officer may, without a warrant, arrest any person on Wake Island who violates any provision of this part or commits a crime that is not a violation of this part, in his presence, or that he reasonably believes that person to have committed.

(c) In making an arrest, a peace officer must display a warrant, if he has one, or otherwise clearly advise the person arrested of the violation alleged, and thereafter require him to submit and be taken before the appropriate official on Wake Island.

(d) In making an arrest, a peace officer may use only the degree of force needed to effect submission, and may remove any weapon in the possession of the person arrested.

(e) A peace officer may, whenever necessary to enter any building, vehicle, or aircraft to execute a warrant of arrest, force an entry after verbal warning.

(f) A peace officer may force an entry into any building, vehicle, or aircraft whenever—

(1) It appears necessary to prevent serious injury to persons or damage to property and time does not permit the obtaining of a warrant;

(2) To effect an arrest when in hot pursuit; or

(3) To prevent the commission of a crime which he reasonably believes is being committed or is about to be committed.

§ 935.123 Warrants.

Any Judge may issue or direct the Clerk to issue a warrant for arrest if, upon complaint, it appears that there is probable cause to believe an offense has been committed and that the person named in the warrant has committed it. If a Judge is not available, the warrant may be issued by the Clerk and executed, but any such warrant shall be thereafter approved or quashed by the first available Judge. The issuing officer shall—

(a) Place the name of the person charged with the offense in the warrant, or if his name is not known, any name or description by which he can be identified with reasonable certainty;

(b) Describe in the warrant the offense charged;

(c) Place in the warrant a command that the person charged with the offense be arrested and brought before the Wake Island Court;

(d) Sign the warrant; and

(e) Issue the warrant to a peace officer for execution.

§ 935.124 Release from custody.

The Chief Judge may authorize the Clerk to issue pro forma orders of the Court discharging any person from custody, with or without bail, pending trial, whenever further restraint is not required for protection of persons or property on Wake Island. Persons not so discharged shall be brought before a Judge or U.S. Magistrate as soon as a Judge or Magistrate is available. Judges may discharge defendants from custody, with or without bail or upon recognizance, or continue custody pending trial as the interests of justice and public safety require.

§ 935.125 Citation in place of arrest.

In any case in which a peace officer may make an arrest without a warrant, he may issue and serve a citation if he considers that the public interest does not require an arrest. The citation must briefly describe the offense charged and direct the accused to appear before the Wake Island Court at a designated time and place.

Subpart N—Motor Vehicle Code

§ 935.130 Applicability.

This subpart applies to self-propelled motor vehicles (except aircraft), including attached trailers.

§ 935.131 Right-hand side of the road.

Each person driving a motor vehicle on Wake Island shall drive on the right-hand side of the road, except where necessary to pass or on streets where a sign declaring one-way traffic is posted.

§ 935.132 Speed limits.

Each person operating a motor vehicle on Wake Island shall operate it at a speed—

(a) That is reasonable, safe, and proper, considering time of day, road and weather conditions, the kind of motor vehicle, and the proximity to persons or buildings, or both; and

(b) That does not exceed 40 miles an hour or such lesser speed limit as may be posted.

§ 935.133 Right-of-way.

(a) A pedestrian has the right-of-way over vehicular traffic when in the vicinity of a building, school, or residential area.

(b) In any case in which two motor vehicles have arrived at an uncontrolled intersection at the same time, the vehicle on the right has the right-of-way.

(c) If the driver of a motor vehicle enters an intersection with the intent of making a left turn, he shall yield the right-of-way to any other motor vehicle that has previously entered the intersection or is within hazardous proximity.

(d) When being overtaken by another motor vehicle, the driver of the slower vehicle shall move it to the right to allow safe passing.

(e) The driver of a motor vehicle shall yield the right-of-way to emergency vehicles on an emergency run.

§ 935.134 Arm signals.

(a) Any person operating a motor vehicle and making a turn or coming to a stop shall signal the turn or stop in accordance with this section.

(b) A signal for a turn or stop is made by fully extending the left arm as follows:

(1) Left turn—extend left arm horizontally.

(2) Right turn—extend left arm upward.

(3) Stop or decrease speed—extend left arm downward.

(c) A signal light or other device may be used in place of an arm signal prescribed in paragraph (b) of this section if it is visible and intelligible.

§ 935.135 Turns.

(a) Each person making a right turn in a motor vehicle shall make the approach and turn as close as practicable to the right-hand curb or road edge.

(b) Each person making a left turn in a motor vehicle shall make the approach and turn immediately to the right of the center of the road, except that on multi-lane roads of one-way traffic flow he may make the turn only from the left lane.

(c) No person may make a U-turn in a motor vehicle if he cannot be seen by the driver of any approaching vehicle within a distance of 500 feet.

(d) No person may place a vehicle in motion from a stopped position, or change from or merge into a lane of traffic, until he can safely make that movement.

§ 935.136 General operating rules.

No person may, while on Wake Island—

(a) Operate a motor vehicle in a careless or reckless manner;

(b) Operate or occupy a motor vehicle while he is under the influence of a drug or intoxicant;

(c) Consume an alcoholic beverage (including beer, ale, or wine) while he is in a motor vehicle;

(d) Operate a motor vehicle that is overloaded or is carrying more passengers than it was designed to carry;

(e) Ride on the running board, step, or outside of the body of a moving motor vehicle;

(f) Ride a moving motor vehicle with his arm or leg protruding, except when using the left arm to signal a turn;

(g) Operate a motor vehicle in a speed contest or drag race;

(h) Park a motor vehicle for a period longer than the posted time limit;

(i) Stop, park, or operate a motor vehicle in a manner that impedes or blocks traffic;

(j) Park a motor vehicle in an unposted area, except adjacent to the right-hand curb or edge of the road;

(k) Park a motor vehicle in a reserved or restricted parking area that is not assigned to him;

(l) Sound the horn of a motor vehicle, except as a warning signal;

(m) Operate a tracked or cleated vehicle in a manner that damages a paved or compacted surface;

(n) Operate any motor vehicle contrary to a posted traffic sign;

(o) Operate a motor vehicle as to follow any other vehicle closer than is safe under the circumstances;

(p) Operate a motor vehicle off of established roads, or in a cross-country manner, except when necessary in conducting business;

(q) Operate a motor vehicle at night or when raining on the traveled part of a street or road, without using operating headlights; or

(r) Operate a motor vehicle without each passenger wearing a safety belt; this shall not apply to military combat vehicles designed and fabricated without safety belts.

§ 935.137 Operating requirements.

Each person operating a motor vehicle on Wake Island shall—

(a) Turn off the highbeam headlights of his vehicle when approaching an oncoming vehicle at night; and

(b) Comply with any special traffic instructions given by an authorized person.

§ 935.138 Motor bus operation.

Each person operating a motor bus on Wake Island shall—

(a) Keep its doors closed while the bus is moving with passengers on board; and

(b) Refuse to allow any person to board or alight the bus while it is moving.

§ 935.139 Motor vehicle operator qualifications.

(a) No person may operate a privately owned motor vehicle on Wake Island unless he has an island operator's permit.

(b) The Commander may issue an operator's permit to any person who is at least 18 years of age and satisfactorily demonstrates safe-driving knowledge, ability, and physical fitness.

(c) No person may operate, on Wake Island, a motor vehicle owned by the United States unless he holds a current operator's permit issued by the United States.

(d) Each person operating a motor vehicle on Wake Island shall present his operator's permit to any peace officer, for inspection, upon request.

§ 935.140 Motor vehicle maintenance and equipment.

(a) Each person who has custody of a motor vehicle on Wake Island shall present that vehicle for periodic safety inspection, as required by the Commander.

(b) No person may operate a motor vehicle on Wake Island unless it is in a condition that the Commander considers to be safe and operable.

(c) No person may operate a motor vehicle on Wake Island unless it is equipped with an adequate and properly functioning—

(1) Horn;

(2) Wiper, for any windshield;

(3) Rear vision mirror;

(4) Headlights and taillights;

(5) Brakes;

(6) Muffler;

(7) Spark or ignition noise suppressors; and

(8) Safety belts.

(d) No person may operate a motor vehicle on Wake Island if that vehicle is equipped with a straight exhaust or muffler cutoff.

Subpart O—Registration and Island Permits

§ 935.150 Registration.

(a) Each person who has custody of any of the following on Wake Island shall register it with the Commander.

(1) A privately owned motor vehicle.

(2) A privately owned boat.

(3) An indigenous animal, military working dog, or guide dog for the blind or visually-impaired accompanying its owner.

(4) A narcotic or dangerous drug or any poison.

(b) Each person who obtains custody of an article described in paragraph (a)(4) of this section shall register it immediately upon obtaining custody. Each person who obtains custody of any other article described in paragraph (a) of this section shall register it within 10 days after obtaining custody.

§ 935.151 Island permit for boat and vehicle.

(a) No person may use a privately owned motor vehicle or boat on Wake Island unless he has an island permit for it.

(b) The operator of a motor vehicle shall display its registration number on the vehicle in a place and manner prescribed by the Commander.

§ 935.152 Activities for which permit is required.

No person may engage in any of the following on Wake Island unless he has an island permit:

(a) Any business, commercial, or recreational activity conducted for profit, including a trade, profession, calling, or occupation, or an establishment where food or beverage is prepared, offered, or sold for human consumption (except for personal or family use).

(b) The practice of any medical profession, including dentistry, surgery, osteopathy, and chiropractic.

(c) The erection of any structure or sign, including a major alteration or enlargement of an existing structure.

(d) The burial of any human or animal remains, except that fish and bait scrap may be buried at beaches where fishing is permitted, without obtaining a permit.

(e) Keeping or maintaining an indigenous animal.

(f) Importing, storing, generating, or disposing of hazardous materials.

(g) Importing of solid wastes and importing, storing, generating, treating, or disposing of hazardous wastes, as they are defined in the Solid Waste Disposal Act, as amended, 42 U.S.C. 6901 *et seq.*, and its implementing regulations (40 CFR chapter I).

Subpart P—Public Safety

§ 935.160 Emergency requirements and restrictions.

In the event of any fire, crash, search and rescue, natural disaster, national peril, radiological hazard, or other calamitous emergency—

(a) No person may impede or hamper any officer or employee of the United States or any other person who has emergency authority;

(b) No unauthorized persons may congregate at the scene of the emergency; and

(c) Each person present shall promptly obey the instructions, signals, or alarms of any peace officer, fire or crash crew, or other authorized person, and any orders of the Commander.

§ 935.161 Fire hazards.

(a) Each person engaged in a business or other activity on Wake Island shall, at his expense, provide and maintain (in an accessible location) fire extinguishers of the type, capacity, and quantity satisfactory for protecting life and property in the areas under that person's control.

(b) To minimize fire hazards, no person may store any waste or flammable fluids or materials except in a manner and at a place prescribed by the Commander.

§ 935.162 Use of special areas.

The Commander may regulate the use of designated or posted areas on Wake Island, as follows:

(a) Restricted areas—which no person may enter without permission.

(b) Prohibited activities areas—in which no person may engage in any activity that is specifically prohibited.

(c) Special purpose areas-in which no person may engage in any activity other than that for which the area is reserved.

§ 935.163 Unexploded ordnance material.

Any person who discovers any unexploded ordnance material on Wake Island shall refrain from tampering with it and shall immediately report its site to the Commander.

§ 935.164 Boat operations.

The operator of each boat used at Wake Island shall conform to the limitations on its operations as the Commander may prescribe in the public interest.

§ 935.165 Floating objects.

No person may anchor, moor, or beach any boat, barge, or other floating object on Wake Island in any location or manner other than as prescribed by the Commander.

SUBCHAPTER O—SPECIAL INVESTIGATION [RESERVED]
SUBCHAPTERS P–S [RESERVED]

SUBCHAPTER T—ENVIRONMENTAL PROTECTION

PART 989—ENVIRONMENTAL IMPACT ANALYSIS PROCESS (EIAP)

Sec.
989.1 Purpose.
989.2 Concept.
989.3 Responsibilities.
989.4 Initial considerations.
989.5 Organizational relationships.
989.6 Budgeting and funding.
989.7 Requests from Non-Air Force agencies or entities.
989.8 Analysis of alternatives.
989.9 Cooperation and adoption.
989.10 Tiering.
989.11 Combining EIAP with other documentation.
989.12 AF Form 813, Request for Environmental Impact Analysis.
989.13 Categorical exclusion.
989.14 Environmental assessment.
989.15 Finding of no significant impact.
989.16 Environmental impact statement.
989.17 Notice of intent.
989.18 Scoping.
989.19 Draft EIS.
989.20 Final EIS.
989.21 Record of decision (ROD).
989.22 Mitigation.
989.23 Contractor prepared documents.
989.24 Public notification.
989.25 Base closure and realignment.
989.26 Classified actions (40 CFR 1507.3(c)).
989.27 Occupational safety and health.
989.28 Airspace and range proposals.
989.29 Force structure and unit move proposals.
989.30 Air quality.
989.31 Pollution prevention.
989.32 Noise.
989.33 Environmental justice.
989.34 Special and emergency procedures.
989.35 Reporting requirements.
989.36 Waivers.
989.37 Procedures for analysis abroad.
989.38 Requirements for analysis abroad.

APPENDIX A TO PART 989—GLOSSARY OF REFERENCES, ABBREVIATIONS, ACRONYMS, AND TERMS

APPENDIX B TO PART 989—CATEGORICAL EXCLUSIONS

APPENDIX C TO PART 989—PROCEDURES FOR HOLDING PUBLIC HEARINGS ON DRAFT ENVIRONMENTAL IMPACT STATEMENTS (EIS)

AUTHORITY: 10 U.S.C. 8013.

SOURCE: 64 FR 38129, July 15, 1999, unless otherwise noted.

§ 989.1 Purpose.

(a) This part implements the Air Force Environmental Impact Analysis Process (EIAP) and provides procedures for environmental impact analysis both within the United States and abroad. Because the authority for, and rules governing, each aspect of the EIAP differ depending on whether the action takes place in the United States or outside the United States, this part provides largely separate procedures for each type of action. Consequently, the main body of this part deals primarily with environmental impact analysis under the authority of the National Environmental Policy Act of 1969 (NEPA) (Public Law 91–190, 42 United States Code (U.S.C.) Sections 4321 through 4347), while the primary procedures for environmental impact analysis of actions outside the United States in accordance with Executive Order (E.O.) 12114, Environmental Effects Abroad of Major Federal Actions, are contained in §§ 989.37 and 989.38.

(b) The procedures in this part are essential to achieve and maintain compliance with NEPA and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the NEPA (40 CFR Parts 1500 through 1508, referred to as the "CEQ Regulations"). Further requirements are contained in Department of Defense Directive (DoDD) 4715.1, Environmental Security, Department of Defense Instruction (DoDI) 4715.9, Environmental Planning and Analysis, DoDD 5000.1, Defense Acquisition, and Department of Defense Regulation 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information System Acquisition Programs.[1] To comply with NEPA and complete the EIAP, the CEQ Regulations and this part must be used together.

(c) Air Force activities abroad will comply with this part, E. O. 12114, and 32 CFR part 187 (DoDD 6050.7, Environmental Effects Abroad of Major Department of Defense Actions, March 31,

[1] Copies of the publications are available, at cost, from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

1979). To comply with E.O. 12114 and complete the EIAP, the Executive Order, 32 CFR part 187, and this part must be used together.

(d) Appendix A is a glossary of references, abbreviations, acronyms, and terms. Refer to 40 CFR 1508 for definitions of other terminology used in this part.

[64 FR 38129, July 15, 1999, as amended at 66 FR 16868, Mar. 28, 2001]

§ 989.2 Concept.

(a) This part provides a framework on how to comply with NEPA and E.O. 12114 according to Air Force Policy Directive (AFPD) 32–70[2]. The Air Force specific procedures and requirements in this part are intended to be used by Air Force decision-makers to fully comply with NEPA and the EIAP.

(b) Major commands (MAJCOM) provide additional implementing guidance in their supplemental publications to this part. MAJCOM supplements must identify the specific offices that have implementation responsibility and include any guidance needed to comply with this part. All references to MAJCOMs in this part include the Air National Guard Readiness Center (ANGRC) and other agencies designated as "MAJCOM equivalent" by HQ USAF.

§ 989.3 Responsibilities.

(a) *Office of the Secretary of the Air Force:*

(1) The Deputy Assistant Secretary of the Air Force for Environment, Safety and Occupational Health (SAF/IEE):

(i) Develops environmental planning policy and provides oversight of the EIAP program.

(ii) Determines the level of environmental analysis required for especially important, visible, or controversial Air Force proposals and approves selected Environmental Assessments (EAs) and all Environmental Impact Statements (EISs) prepared for Air Force actions, whether classified or unclassified, except as specified in paragraph (c)(3) of this section.

(iii) Is the liaison on environmental matters with Federal agencies and national level public interest organizations.

(iv) Ensures appropriate offices in the Office of the Secretary of Defense are kept informed on EIAP matters of Defense-wide interest.

(2) The General Counsel (SAF/GC). Provides final legal advice to SAF/IE, HQ USAF, and HQ USAF Environment, Safety and Occupational Health Committee (ESOHC) on EIAP issues.

(3) *Office of Legislative Liaison (SAF/LL):*

(i) Assists with narrowing and defining key issues by arranging consultations with congressional delegations on potentially sensitive actions.

(ii) Distributes draft and final EISs to congressional delegations.

(iii) Reviews and provides the Office of the Secretary of Defense (OSD) with analyses of the Air Force position on proposed and enrolled legislation and executive department testimony dealing with EIAP issues.

(4) *Office of Public Affairs (SAF/PA):*

(i) Reviews and clears environmental documents in accordance with Air Force Instruction (AFI) 35–101, Public Affairs Policies and Procedures[3] prior to public release.

(ii) Assists the environmental planning function and the Air Force Legal Services Agency, Trial Judiciary Division (AFLOA/JAJT), in planning and conducting public scoping meetings and hearings.

(iii) Ensures that public affairs aspects of all EIAP actions are conducted in accordance with this part and AFI 35–101.[4]

(iv) The National Guard Bureau, Office of Public Affairs (NGB-PA), will assume the responsibilities of SAF/PA for the EIAP involving the National Guard Bureau, Air Directorate.

(b) Headquarters U.S. Air Force (HQ USAF). The Civil Engineer (HQ USAF/ILE) is responsible for execution of the EIAP program. The National Guard Bureau Air Directorate (NGB-CF) oversees the EIAP for Air National Guard actions.

(c) MAJCOMs, the Air National Guard, Field Operating Agencies (FOAs), and Single Manager Programs.

[2] See footnote 1 to § 989.1.

[3] See footnote 1 to § 989.1.

[4] See footnote 1 to § 989.1.

These organizations establish procedures that comply with this part wherever they are the host unit for preparing and using required environmental documentation in making decisions about proposed actions and programs within their commands or areas of responsibility.

(1) Air Force Center for Engineering and the Environment (AFCEE). The AFCEE Technical Directorate, Built Infrastructure Division (AFCEE/TDB) is available to provide technical assistance and has the capability to provide contract support to the proponent, EPF, and MAJCOMs in developing EIAP documents.

(2) Air Force Regional Environmental Offices (REOs). REOs review non-Air Force environmental documents that may have an impact on the Air Force. Requests for review of such documents should be directed to the proper REO (Atlanta, Dallas, or San Francisco) along with any relevant comments. The REO:

(i) Notifies the proponent, after receipt, that the REO is the single point of contact for the Air Force review of the document.

(ii) Requests comments from potentially affected installations, MAJCOMs, the ANG, and HQ USAF, as appropriate.

(iii) Consolidates comments into the Air Force official response and submits the final response to the proponent.

(iv) Provides to HQ USAF/A7CI and the appropriate MAJCOMs and installations a copy of the final response and a complete set of all review comments.

(3) Single Manager Acquisition Programs (system-related NEPA). The proponent Single Manager (i.e., System Program Director, Materiel Group Managers, and Product Group Managers) for all programs, regardless of acquisition category, shall comply with DoD Regulation 5000.2–R. SAF/AQR, as the Air Force Acquisition Executive Office, is the final approval authority for all system-related NEPA documents. SAF/AQR is responsible for accomplishing appropriate Headquarters EPC/ESOHC review. The Single Manager will obtain appropriate Product Center EPC approval prior to forwarding necessary EIAP documents (i.e., Notices of Intent (NOIs) and preliminary draft and final EAs and EISs) to SAF/AQR. The Single Manager will allow for concurrent review of EIAP documents by HQ AFMC/CEV and the Operational Command (HQ ACC, HQ AMC, HQ AFSPC, etc.) The Single Manager is responsible for budgeting and funding EIAP efforts, including EIAP for research, development, testing, and evaluation activities.

(4) *Key Air Force environmental participants.* The EIAP must be approached as an integrated team effort including key participants within the Air Force and also involving outside federal agencies, state, Tribal, and local governments, interested outside parties, citizens groups, and the general public. Key Air Force participants may include the following functional areas, as well as others:

Proponent
Civil Engineers/Environmental Planning Function
Staff Judge Advocate
Public Affairs
Medical Service (Bioenvironmental Engineer)
Safety Office
Range and Airspace Managers
Bases and Units
Plans and Programs
Logistics
Personnel
Legislative Liaison

(d) *Proponent.* Each office, unit, single manager, or activity at any level that initiates Air Force actions is responsible for:

(1) Complying with the EIAP and shall ensure integration of the EIAP during the initial planning stages of proposed actions so that planning and decisions reflect environmental values, delays are avoided later in the process, and potential conflicts are precluded.

(2) Notifying the EPF of a pending action and completing Section I of AF Form 813, Request for Environmental Impact Analysis. Prepare the Description of Proposed Action and Alternatives (DOPAA) through an interdisciplinary team approach including the EPF and other key Air Force participants.

(3) Identifying key decision points and coordinating with the EPF on EIAP phasing to ensure that environmental documents are available to the

decision-maker before the final decision is made and ensuring that, until the EIAP is complete, resources are not committed prejudicing the selection of alternatives nor actions taken having an adverse environmental impact or limiting the choice of reasonable alternatives.

(4) Determining, with the EPF, as early as possible whether to prepare an EIS. The proponent and the EPF will conduct an early internal scoping process as part of the EIAP process. The internal scoping process should involve key Air Force environmental participants (see § 989.3(c)(4)) and other Air Force offices as needed and conclude with preparation of a DOPAA. For complex or detailed EAs or EISs, an outside facilitator trained in EIAP may be used to focus and guide the discussion. Department of the Air Force personnel, rather than contractors, should generally be used to prepare the DOPAA.

(5) Presenting the DOPAA to the EPC for review and comment.

(6) Coordinating with the EPF, Public Affairs, and Staff Judge Advocate prior to organizing public or interagency meetings which deal with EIAP elements of a proposed action and involving persons or agencies outside the Air Force.

(7) Subsequent to the decision to prepare an EIS, assisting the EPF and Public Affairs Office in preparing a draft NOI to prepare an EIS. All NOIs must be forwarded through the MAJCOM EPF to HQ USAF/A7CI for review and publication in the FEDERAL REGISTER. Publication in the FEDERAL REGISTER is accomplished in accordance with AFI 37–120, FEDERAL REGISTER.[5] (See § 989.17.)

(8) Ensuring that proposed actions are implemented as described in the final EIAP decision documents.

(e) *Environmental Planning Function (EPF).* At every level of command, the EPF is one of the key Air Force participants responsible for the EIAP. The EPF can be the environmental flight within a civil engineer squadron, a separate environmental management office at an installation, the CEV at MAJCOMs, or an equivalent environmental function located with a program office. The EPF:

(1) Supports the EIAP by bringing key participants in at the beginning of a proposed action and involving them throughout the EIAP. Key participants play an important role in defining and focusing key issues at the initial stage.

(2) At the request of the proponent, prepares environmental documents using an interdisciplinary approach, or obtains technical assistance through Air Force channels or contract support. Assists the proponent in obtaining review of environmental documents.

(3) Assists the proponent in preparing a DOPAA and actively supports the proponent during all phases of the EIAP.

(4) Evaluates proposed actions and completes Sections II and III of AF Form 813, subsequent to submission by the proponent and determines whether a Categorical Exclusion (CATEX) applies. The responsible EPF member signs the AF Form 813 certification.

(5) Identifies and documents, with technical advice from the Bioenvironmental Engineer and other staff members, environmental quality standards that relate to the action under evaluation.

(6) Supports the proponent in preparing environmental documents, or obtains technical assistance through Air Force channels or contract support and adopts the documents as official Air Force papers when completed and approved.

(7) Ensures the EIAP is conducted on base-level and MAJCOM-level plans, including contingency plans for the training, movement, and operations of Air Force personnel and equipment.

(8) Prepares the NOI to prepare an EIS with assistance from the proponent and the Public Affairs Office.

(9) Prepares applicable portions of the Certificate of Compliance for each military construction project according to AFI 32–1021, Planning and Programming of Facility Construction Projects.[6]

(10) Submits one hard copy and one electronic copy of the final EA/Finding of No Significant Impact (FONSI) and

[5] See footnote 1 to § 989.1.

[6] See footnote 1 to § 989.1.

EIS/Record of Decision (ROD) to the Defense Technical Information Center.

(f) *Environment, Safety, and Occupational Health Council (ESOHC)*. The ESOHC provides senior leadership involvement and direction at all levels of command in accordance with AFI 90–801, Environment, Safety, and Occupational Health Councils, 25 March 2005.

(g) *Staff Judge Advocate (SJA)*. The Staff Judge Advocate:

(1) Advises the proponent, EPF, and EPC on CATEX determinations and the legal sufficiency of environmental documents.

(2) Advises the EPF during the scoping process of issues that should be addressed in EISs and on procedures for the conduct of public hearings.

(3) Coordinates the appointment of the independent hearing officer with AFLOA/JAJT and provides support for the hearing officer in cases of public hearings on the draft EIS. The proponent pays administrative and Temporary Duty (TDY) costs. The hearing officer presides at hearings and makes final decisions regarding hearing procedures.

(4) Promptly refers all matters causing or likely to cause substantial public controversy or litigation through channels to AFLOA/JACE (or NGB-JA).

(h) *Public Affairs Officer*. This officer:

(1) Advises the EPF, the EPC, and the proponent on public affairs activities on proposed actions and reviews environmental documents for public involvement issues.

(2) Advises the EPF of issues and competing interests that should be addressed in the EIS or EA.

(3) Assists in preparation of and attends public meetings or media sessions on environmental issues.

(4) Prepares, coordinates, and distributes news releases and other public information materials related to the proposal and associated EIAP documents.

(5) Notifies the media (television, radio, newspaper) and purchases advertisements when newspapers will not run notices free of charge. The EPF will fund the required advertisements.

(6) Determines and ensures Security Review requirements are met for all information proposed for public release.

(7) For more comprehensive instructions about public affairs activities in environmental matters, see AFI 35–101.[8]

(i) *Medical Service*. The Medical Service, represented by the Bioenvironmental Engineer, provides technical assistance to EPFs in the areas of environmental health standards, environmental effects, and environmental monitoring capabilities. The Air Force Armstrong Laboratory, Occupational and Environmental Health Directorate, provides additional technical support.

(j) *Safety Office*. The Safety Office provides technical review and assistance to EPFs to ensure consideration of safety standards and requirements.

[64 FR 38129, July 15, 1999, as amended at 66 FR 16868, Mar. 28, 2001; 72 FR 37106, July 9, 2007]

§989.4 Initial considerations.

Air Force personnel will:

(a) Consider and document environmental effects of proposed Air Force actions through AF Forms 813, EAs, FONSIs, EISs, RODs, and documents prepared according to E.O. 12114.

(b) Evaluate proposed actions for possible CATEX from environmental impact analysis (appendix B).

(c) Make environmental documents, comments, and responses, including those of other federal agencies, state, Tribal, and local governments, and the public, part of the record available for review and use at all levels of decisionmaking.

(d) Review the specific alternatives analyzed in the EIAP when evaluating the proposal prior to decisionmaking.

(e) Ensure that alternatives to be considered by the decisionmaker are both reasonable and within the range of alternatives analyzed in the environmental documents.

(f) Pursue the objective of furthering foreign policy and national security interests while at the same time considering important environmental factors.

(g) Consider the environmental effects of actions that affect the global commons.

(h) Determine whether any foreign government should be informed of the

[8] See footnote 1 to §989.1.

availability of environmental documents. Formal arrangements with foreign governments concerning environmental matters and communications with foreign governments concerning environmental agreements will be coordinated with the Department of State by the Deputy Assistant Secretary of the Air Force for Environment, Safety, and Occupational Health (SAF/IEE) through the Deputy Under Secretary of Defense (Environmental Security). This coordination requirement does not apply to informal working-level communications and arrangements.

[64 FR 38129, July 15, 1999, as amended at 72 FR 37106, July 9, 2007]

§ 989.5 Organizational relationships.

(a) The host EPF manages the EIAP using an interdisciplinary team approach. This is especially important for tenant-proposed actions, because the host command is responsible for the EIAP for actions related to the host command's installations.

(b) The host command prepares environmental documents internally or directs the host base to prepare the environmental documents. Environmental document preparation may be by contract (requiring the tenant to fund the EIAP), by the tenant unit, or by the host. Regardless of the preparation method, the host command will ensure the required environmental analysis is accomplished before a decision is made on the proposal and an action is undertaken. Support agreements should provide specific procedures to ensure host oversight of tenant compliance, tenant funding or reimbursement of host EIAP costs, and tenant compliance with the EIAP regardless of the tenant not being an Air Force organization.

(c) For aircraft beddown and unit realignment actions, program elements are identified in the Program Objective Memorandum. Subsequent Program Change Requests must include AF Form 813.

(d) To ensure timely initiation of the EIAP, SAF/AQ forwards information copies of all Mission Need Statements and System Operational Requirements Documents to SAF/IEE, HQ USAF/A7CI (or NGB/A7CV), the Air Force Medical Operations Agency, Aerospace Medicine Office (AFMOA/SG), and the affected MAJCOM EPFs.

(e) The MAJCOM of the scheduling unit managing affected airspace is responsible for preparing and approving environmental analyses.

[64 FR 38129, July 15, 1999, as amended at 66 FR 16868, Mar. 28, 2001; 72 FR 37106, July 9, 2007]

§ 989.6 Budgeting and funding.

Contract EIAP efforts are proponent MAJCOM responsibilities. Each year, the EPF programs for anticipated out-year EIAP workloads based on inputs from command proponents. If proponent offices exceed the budget in a given year or identify unforeseen requirements, the proponent offices must provide the remaining funding.

§ 989.7 Requests from Non-Air Force agencies or entities.

(a) Non-Air Force agencies or entities may request the Air Force to undertake an action, such as issuing a permit or outleasing Air Force property, that may primarily benefit the requester or an agency other than the Air Force. The EPF and other Air Force staff elements must identify such requests and coordinate with the proponent of the non-Air Force proposal, as well as with concerned state, Tribal, and local governments.

(b) Air Force decisions on such proposals must take into consideration the potential environmental impacts of the applicant's proposed activity (as described in an Air Force environmental document), insofar as the proposed action involves Air Force property or programs, or requires Air Force approval.

(c) The Air Force may require the requester to prepare, at the requester's expense, an analysis of environmental impacts (40 CFR 1506.5), or the requester may be required to pay for an EA or EIS to be prepared by a contractor selected and supervised by the Air Force. The EPF may permit requesters to submit draft EAs for their proposed actions, except for actions described in § 989.16(a) and (b), or for actions the EPF has reason to believe will ultimately require an EIS. For EISs, the EPF has the responsibility to prepare the environmental document,

although responsibility for funding remains with the requester. The fact that the requester has prepared environmental documents at its own expense does not commit the Air Force to allow or undertake the proposed action or its alternatives. The requester is not entitled to any preference over other potential parties with whom the Air Force might contract or make similar arrangements.

(d) In no event is the requester who prepares or funds an environmental analysis entitled to reimbursement from the Air Force. When requesters prepare environmental documents outside the Air Force, the Air Force must independently evaluate and approve the scope and content of the environmental analyses before using the analyses to fulfill EIAP requirements. Any outside environmental analysis must evaluate reasonable alternatives as defined in §989.8.

§989.8 Analysis of alternatives.

(a) The Air Force must analyze reasonable alternatives to the proposed action and the "no action" alternative in all EAs and EISs, as fully as the proposed action alternative.

(b) "Reasonable" alternatives are those that meet the underlying purpose and need for the proposed action and that would cause a reasonable person to inquire further before choosing a particular course of action. Reasonable alternatives are not limited to those directly within the power of the Air Force to implement. They may involve another government agency or military service to assist in the project or even to become the lead agency. The Air Force must also consider reasonable alternatives raised during the scoping process (see §989.18) or suggested by others, as well as combinations of alternatives. The Air Force need not analyze highly speculative alternatives, such as those requiring a major, unlikely change in law or governmental policy. If the Air Force identifies a large number of reasonable alternatives, it may limit alternatives selected for detailed environmental analysis to a reasonable range or to a reasonable number of examples covering the full spectrum of alternatives.

(c) The Air Force may expressly eliminate alternatives from detailed analysis, based on reasonable selection standards (for example, operational, technical, or environmental standards suitable to a particular project). In consultation with the EPF, the appropriate Air Force organization may develop written selection standards to firmly establish what is a "reasonable" alternative for a particular project, but they must not so narrowly define these standards that they unnecessarily limit consideration to the proposal initially favored by proponents. This discussion of reasonable alternatives applies equally to EAs and EISs.

(d) Except in those rare instances where excused by law, the Air Force must always consider and assess the environmental impacts of the "no action" alternative. "No action" may mean either that current management practice will not change or that the proposed action will not take place. If no action would result in other predictable actions, those actions should be discussed within the no action alternative section. The discussion of the no action alternative and the other alternatives should be comparable in detail to that of the proposed action.

§989.9 Cooperation and adoption.

(a) *Lead and cooperating agency (40 CFR 1501.5 and 1501.6).* When the Air Force is a cooperating agency in the preparation of an EIS, the Air Force reviews and approves principal environmental documents within the EIAP as if they were prepared by the Air Force. The Air Force executes a ROD for its program decisions that are based on an EIS for which the Air Force is a cooperating agency. The Air Force may also be a lead or cooperating agency on an EA using similar procedures, but the MAJCOM EPC retains approval authority unless otherwise directed by HQ USAF. Before invoking provisions of 40 CFR 1501.5(e), the lowest authority level possible resolves disputes concerning which agency is the lead agency.

(b) *Adoption of EA or EIS.* The Air Force, even though not a cooperating agency, may adopt an EA or EIS prepared by another entity where the proposed action is substantially the same

as the action described in the EA or EIS. In this case, the EA or EIS must be recirculated as a final EA or EIS but the Air Force must independently review the EA or EIS and determine that it is current and that it satisfies the requirements of this part. The Air Force then prepares its own FONSI or ROD, as the case may be. In the situation where the proposed action is not substantially the same as that described in the EA or the EIS, the Air Force may adopt the EA or EIS, or a portion thereof, by circulating the EA or EIS as a draft and then preparing the final EA or EIS.

§ 989.10 Tiering.

The Air Force should use tiered (40 CFR 1502.20) environmental documents, and environmental documents prepared by other agencies, to eliminate repetitive discussions of the same issues and to focus on the issues relating to specific actions. If the Air Force adopts another Federal agency's environmental document, subsequent Air Force environmental documents may also be tiered.

§ 989.11 Combining EIAP with other documentation.

(a) The EPF combines environmental analysis with other related documentation when practicable (40 CFR 1506.4) following the procedures prescribed by the CEQ regulations and this part.

(b) The EPF must integrate comprehensive planning (AFI 32–7062, Air Force Comprehensive Planning[9]) with the requirements of the EIAP. Prior to making a decision to proceed, the EPF must analyze the environmental impacts that could result from implementation of a proposal identified in the comprehensive plan.

§ 989.12 AF Form 813, Request for Environmental Impact Analysis.

The Air Force uses AF Form 813 to document the need for environmental analysis or for certain CATEX determinations for proposed actions. The form helps narrow and focus the issues to potential environmental impacts. AF Form 813 must be retained with the EA or EIS to record the focusing of environmental issues.

[64 FR 38129, July 15, 1999, as amended at 66 FR 16868, Mar. 28, 2001]

§ 989.13 Categorical exclusion.

(a) CATEXs define those categories of actions that do not individually or cumulatively have potential for significant effect on the environment and do not, therefore, require further environmental analysis in an EA or an EIS. The list of Air Force-approved CATEXs is in appendix B. Supplements to this part may not add CATEXs or expand the scope of the CATEXs in appendix B.

(b) Characteristics of categories of actions that usually do not require either an EIS or an EA (in the absence of extraordinary circumstances) include:

(1) Minimal adverse effect on environmental quality.

(2) No significant change to existing environmental conditions.

(3) No significant cumulative environmental impact.

(4) Socioeconomic effects only.

(5) Similarity to actions previously assessed and found to have no significant environmental impacts.

(c) CATEXs apply to actions in the United States and abroad. General exemptions specific to actions abroad are in 32 CFR part 187. The EPF or other decision-maker forwards requests for additional exemption determinations for actions abroad to HQ USAF/A7CI with a justification letter.

(d) Normally, any decision-making level may determine the applicability of a CATEX and need not formally record the determination on AF Form 813 or elsewhere, except as noted in the CATEX list.

(e) Application of a CATEX to an action does not eliminate the need to meet air conformity requirements (see § 989.30).

[64 FR 38129, July 15, 1999, as amended at 66 FR 16868, Mar. 28, 2001; 72 FR 37106, July 9, 2007]

§ 989.14 Environmental assessment.

(a) When a proposed action is one not usually requiring an EIS but is not categorically excluded, the EPF supports the proponent in preparing an EA (40

[9] See footnote 1 to § 989.1.

CFR 1508.9). Every EA must lead to either a FONSI, a decision to prepare an EIS, or no action on the proposal.

(b) Whenever a proposed action usually requires an EIS, the EPF responsible for the EIAP may prepare an EA to definitively determine if an EIS is required based on the analysis of environmental impacts. Alternatively, the EPF may choose to bypass the EA and proceed with preparation of an EIS.

(c) An EA is a written analysis that:

(1) Provides analysis sufficient to determine whether to prepare an EIS or a FONSI.

(2) Aids the Air Force in complying with the NEPA when no EIS is required.

(d) The length of an EA should be as short and concise as possible, while matching the magnitude of the proposal. An EA briefly discusses the need for the proposed action, reasonable alternatives to the proposed action, the affected environment, the environmental impacts of the proposed action and alternatives (including the "no action" alternative), and a listing of agencies and persons consulted during preparation. The EA should not contain long descriptions or lengthy, detailed data. Rather, incorporate by reference background data to support the concise discussion of the proposal and relevant issues.

(e) The format for the EA may be the same as the EIS. The alternatives section of an EA and an EIS are similar and should follow the alternatives analysis guidance outlined in § 989.8.

(f) The EPF should design the EA to facilitate rapidly transforming the document into an EIS if the environmental analysis reveals a significant impact.

(g) As a finding contained in the draft FONSI, a Finding of No Practicable Alternative (FONPA) must be submitted (five hard copies and an electronic version) to the MAJCOM EPF when the alternative selected could be located in wetlands or floodplains, and must discuss why no other practicable alternative exists to avoid impacts. See AFI 32–7064, Integrated Natural Resources Management.

(h) EAs and accompanying FONSIs that require the Air Force to make Clean Air Act General Conformity Determinations shall be submitted (five hard copies and an electronic version) through the MAJCOM EPF to HQ USAF/A7CI for SAF/IEE approval. SAF/IEE signs all General Conformity Determinations and will also sign the companion FONSIs, when requested by the MAJCOM (see § 989.30).

(i) In cases potentially involving a high degree of controversy or Air Force-wide concern, the MAJCOM, after consultation with HQ USAF/A7CI, may request HQ USAF ESOHC review and approval of an EA, or HQ USAF may direct the MAJCOM to forward an EA (five hard copies and an electronic version) for HQ USAF ESOHC review and approval.

(j) As a minimum, the following EAs require MAJCOM approval because they involve topics of special importance or interest. Unless directed otherwise by HQ USAF/A7CI, the installation EPF must forward the following types of EAs to the MAJCOM EPF, along with an unsigned draft FONSI: (MAJCOMs can require other EAs to receive MAJCOM approval in addition to those types specified here.)

(1) All EAs on non-Air Force proposals that require an Air Force decision, such as use of Air Force property for highways, space ports, and joint-use proposals.

(2) EAs where mitigation to insignificance is accomplished in lieu of initiating an EIS (§ 989.22(c)).

(k) A few examples of actions that normally require preparation of an EA (except as indicated in the CATEX list) include:

(1) Public land withdrawals of less than 5,000 acres.

(2) Minor mission realignments and aircraft beddowns.

(3) New building construction on base within developed areas.

(4) Minor modifications to Military Operating Areas (MOAs), air-to-ground weapons ranges, and military training routes.

(l) The Air Force will involve other federal agencies, state, Tribal, and local governments, and the public in the preparation of EAs (40 CFR 1501.4(b) and 1506.6). The extent of involvement usually coincides with the

magnitude and complexity of the proposed action and its potential environmental effect on the area. For proposed actions described in § 989.15(e)(2), use either the scoping process described in § 989.18 or the public notice process in § 989.24.

[64 FR 38129, July 15, 1999, as amended at 66 FR 16868, Mar. 28, 2001; 72 FR 37106, July 9, 2007]

§ 989.15 Finding of no significant impact.

(a) The FONSI (40 CFR 1508.13) briefly describes why an action would not have a significant effect on the environment and thus will not be the subject of an EIS. The FONSI must summarize the EA or, preferably, have it attached and incorporated by reference, and must note any other environmental documents related to the action.

(b) If the EA is not incorporated by reference, the FONSI must include:

(1) Name of the action.

(2) Brief description of the action (including alternatives considered and the chosen alternative).

(3) Brief discussion of anticipated environmental effects.

(4) Conclusions leading to the FONSI.

(5) All mitigation actions that will be adopted with implementation of the proposal (see § 989.22).

(c) Keep FONSIs as brief as possible. Only rarely should FONSIs exceed two typewritten pages. Stand-alone FONSIs without an attached EA may be longer.

(d) For actions of regional or local interest, disseminate the FONSI according to § 989.24. The MAJCOM and NGB are responsible for release of FONSIs to regional offices of Federal agencies, the state single point of contact (SPOC), and state agencies concurrent with local release by the installations.

(e) The EPF must make the EA and unsigned FONSI available to the affected public and provide the EA and unsigned FONSI to organizations and individuals requesting them and to whomever the proponent or the EPF has reason to believe is interested in the action, unless disclosure is precluded for security classification reasons. Draft EAs and unsigned draft FONSIs will be clearly identified as drafts and distributed via cover letter which will explain their purpose and need. The EPF provides a copy of the documents without cost to organizations and individuals requesting them. The FONSI transmittal date (date of letter of transmittal) to the state SPOC or other equivalent agency is the official notification date.

(1) Before the FONSI is signed and the action is implemented, the EPF should allow sufficient time to receive comments from the public. The time period will reflect the magnitude of the proposed action and its potential for controversy. The greater the magnitude of the proposed action or its potential for controversy, the longer the time that must be allowed for public review. Mandatory review periods for certain defined actions are contained in § 989.15(e)(2). These are not all inclusive but merely specific examples. In every case where an EA and FONSI are prepared, the proponent and EPF must determine how much time will be allowed for public review. In all cases, other than classified actions, a public review period should be the norm unless clearly unnecessary due to the lack of potential controversy.

(2) In the following circumstances, the EA and unsigned FONSI are made available for public review for at least 30 days before FONSI approval and implementing the action (40 CFR 1501.4(e)(2)):

(i) When the proposed action is, or is closely similar to, one that usually requires preparation of an EIS (see § 989.16).

(ii) If it is an unusual case, a new kind of action, or a precedent-setting case in terms of its potential environmental impacts.

(iii) If the proposed action would be located in a floodplain or wetland.

(iv) If the action is mitigated to insignificance in the FONSI, in lieu of an EIS (§ 989.22(c)).

(v) If the proposed action is a change to airspace use or designation.

(vi) If the proposed action would have a disproportionately high and adverse environmental effect on minority populations and low-income populations.

(f) As a general rule, the same organizational level that prepares the EA also reviews and recommends the FONSI for approval by the EPC. MAJCOMs may decide the level of EA

approval and FONSI signature, except as provided in § 989.14(g), (h), (i), and (j).

§ 989.16 Environmental impact statement.

(a) Certain classes of environmental impacts normally require preparation of an EIS (40 CFR 1501.4). These include, but are not limited to:

(1) Potential for significant degradation of the environment.

(2) Potential for significant threat or hazard to public health or safety.

(3) Substantial environmental controversy concerning the significance or nature of the environmental impact of a proposed action.

(b) Certain other actions normally, but not always, require an EIS. These include, but are not limited to:

(1) Public land withdrawals of over 5,000 acres (Engle Act, 43 U.S.C. 155 through 158).

(2) Establishment of new air-to-ground weapons ranges.

(3) Site selection of new airfields.

(4) Site selection of major installations.

(5) Development of major new weapons systems (at decision points that involve demonstration, validation, production, deployment, and area or site selection for deployment).

(6) Establishing or expanding supersonic training areas over land below 30,000 feet MSL (mean sea level).

(7) Disposal and reuse of closing installations.

§ 989.17 Notice of intent.

The EPF must furnish, through the MAJCOM, to HQ USAF/A7CI the NOI (40 CFR 1508.22) describing the proposed action for congressional notification and publication in the FEDERAL REGISTER. The EPF, through the host base public affairs office, will also provide the approved NOI to newspapers and other media in the area potentially affected by the proposed action. The EPF must provide copies of the notice to the SPOC and must also distribute it to requesting agencies, organizations, and individuals. Along with the draft NOI, the EPF must also forward the completed DOPAA, through the MAJCOM, to HQ USAF for information.

[64 FR 38129, July 15, 1999, as amended at 66 FR 16868, Mar. 28, 2001; 72 FR 37106, July 9, 2007]

§ 989.18 Scoping.

(a) After publication of the NOI for an EIS, the EPF must initiate the public scoping process (40 CFR 1501.7) to determine the scope of issues to be addressed and to help identify significant environmental issues to be analyzed in depth. Methods of scoping range from soliciting written comments to conducting public scoping meetings (see 40 CFR 1501.7 and 1506.6(e)). The scoping process is an iterative, pro-active process of communicating with individual citizens, neighborhood, community, and local leaders, public interest groups, congressional delegations, state, Tribal, and local governments, and federal agencies. The scoping process must start prior to official public scoping meetings and continue through to preparation of the draft EIS. The purpose of this process is to de-emphasize insignificant issues and focus the scope of the environmental analysis on significant issues (40 CFR 1500.4(g)). Additionally, scoping allows early and more meaningful participation by the public. The result of scoping is that the proponent and EPF determine the range of actions, alternatives, and impacts to be considered in the EIS (40 CFR 1508.25). The EPF must send scripts for scoping meetings to HQ USAF/A7CI (or ANGRC/CEV) no later than 30 days before the first scoping meeting. Scoping meeting plans are similar in content to public hearing plans (see appendix C). Public scoping meetings should generally be held at locations not on the installation.

(b) Where it is anticipated the proposed action and its alternatives will have disproportionately high and adverse human health or environmental effects on minority populations or low-income populations, special efforts

shall be made to reach these populations. This might include special informational meetings or notices in minority and low-income areas concerning the regular scoping process.

[64 FR 38129, July 15, 1999, as amended at 66 FR 16868, Mar. 28, 2001; 66 FR 26793, May 15, 2001; 72 FR 37106, July 9, 2007]

§ 989.19 Draft EIS.

(a) *Preliminary draft.* The EPF supports the proponent in preparation of a preliminary draft EIS (PDEIS) (40 CFR 1502.9) based on the scope of issues decided on during the scoping process. The format of the EIS must be in accordance with the format recommended in the CEQ regulations (40 CFR 1502.10 and 1502.11). The CEQ regulations indicate that EISs normally contain fewer than 150 pages (300 pages for proposals of unusual complexity). The EPF provides a sufficient number of copies of the PDEIS to HQ USAF/A7CI for HQ USAF ESOHC security and policy review in each member's area of responsibility and to AFCEE/TDB for technical review.

(b) *Review of draft EIS.* After the HQ USAF ESOHC review, the EPF assists the appropriate Air Force organization in making any necessary revisions to the PDEIS and forwards it to HQ USAF/A7CI as a draft EIS to ensure completion of all security and policy reviews and to certify releasability. Once the draft EIS is approved, HQ USAF/A7CI notifies the EPF to print sufficient copies of the draft EIS for distribution to congressional delegations and interested agencies at least 7 calendar days prior to publication of the Notice of Availability (NOA) in the FEDERAL REGISTER. After congressional distribution, the EPF sends the draft EIS to all others on the distribution list. HQ USAF/A7CI then files the document with the U.S. Environmental Protection Agency (USEPA) and provides a copy to the Deputy Under Secretary of Defense for Environmental Security.

(c) *Public review of draft EIS (40 CFR 1502.19 and 1506.6):* (1) The public comment period for the draft EIS is at least 45 days starting from the publication date of the NOA of the draft EIS in the FEDERAL REGISTER. USEPA publishes in the FEDERAL REGISTER NOAs of EISs filed during the preceding week. This public comment period may be extended by the EPF. If the draft EIS is unusually long, the EPF may distribute a summary to the public with an attached list of locations (such as public libraries) where the entire draft EIS may be reviewed. The EPF must distribute the full draft EIS to certain entities, for example, agencies with jurisdiction by law or agencies with special expertise in evaluating the environmental impacts, and anyone else requesting the entire draft EIS (40 CFR 1502.19 and 1506.6).

(2) The EPF sponsors public hearings on the draft EIS according to the procedures in appendix C to this part. Hearings take place no sooner than 15 days after the FEDERAL REGISTER publication of the NOA and at least 15 days before the end of the comment period. Scheduling hearings toward the end of the comment period is encouraged to allow the public to obtain and more thoroughly review the draft EIS. The EPF must provide hearing scripts to HQ USAF/A7CI (or ANGRC/CEV) no later than 30 days prior to the first public hearing. Public hearings should generally be held at off-base locations. Submit requests to deviate from procedures in appendix C to this part to HQ USAF/A7CI for SAF/IEE approval.

(3) Where analyses indicate that a proposed action will potentially have disproportionately high and adverse human health or environmental effects on minority populations or low-income populations, the EPF should make special efforts to ensure that these potentially impacted populations are brought into the review process.

(d) *Response to comments (40 CFR 1503.4).* The EPF must incorporate in the Final EIS its responses to comments on the Draft EIS by modifying the text and referring in the appendix to where the comment is addressed or providing a written explanation in the comments section, or both. The EPF may group comments of a similar nature together to allow a common response and may also respond to individuals separately.

(e) *Seeking additional comments.* The EPF may, at any time during the EIS process, seek additional public comments, such as when there has been a

significant change in circumstances, development of significant new information of a relevant nature, or where there is substantial environmental controversy concerning the proposed action. Significant new information leading to public controversy regarding the scope after the scoping process is such a changed circumstance. An additional public comment period may also be necessary after the publication of the draft EIS due to public controversy or changes made as the result of previous public comments. Such periods when additional public comments are sought shall last for at least 30 days.

[64 FR 38129, July 15, 1999, as amended at 66 FR 16868, Mar. 28, 2001; 72 FR 37106, July 9, 2007]

§ 989.20 Final EIS.

(a) If changes in the draft EIS are minor or limited to factual corrections and responses to comments, the proponent and EPF may, with the prior approval of HQ USAF/A7CI and SAF/IEE, prepare a document containing only comments on the Draft EIS, Air Force responses, and errata sheets of changes staffed to the HQ USAF ESOHC for coordination. However, the EPF must submit the Draft EIS and all of the above documents, with a new cover sheet indicating that it is a final EIS (40 CFR 1503.4(c)), to HQ USAF/A7CI for filing with the EPA (40 CFR 1506.9). If more extensive modifications are required, the EPF must prepare a preliminary final EIS incorporating these modifications for coordination within the Air Force. Regardless of which procedure is followed, the final EIS must be processed in the same way as the draft EIS, including receipt of copies of the EIS by SAF/LLP, except that the public need not be invited to comment during the 30-day post-filing waiting period. The Final EIS should be furnished to every person, organization, or agency that made substantive comments on the Draft EIS or requested a copy. Although the EPF is not required to respond to public comments received during this period, comments received must be considered in determining final decisions such as identifying the preferred alternative, appropriate mitigations, or if a supplemental analysis is required.

(b) The EPF processes all necessary supplements to EISs (40 CFR 1502.9) in the same way as the original Draft and Final EIS, except that a new scoping process is not required.

(c) If major steps to advance the proposal have not occurred within 5 years from the date of the Final EIS approval, reevaluation of the documentation should be accomplished to ensure its continued validity.

[64 FR 38129, July 15, 1999, as amended at 66 FR 16868, Mar. 28, 2001; 72 FR 37106, July 9, 2007]

§ 989.21 Record of decision (ROD).

(a) The proponent and the EPF prepare a draft ROD, formally staff it through the MAJCOM EPC, to HQ USAF/A7CI for verification of adequacy, and forwards it to either SAF/IEE or SAF/AQR, as the case may be, for approval and designation of the signator. A ROD (40 CFR 1505.2) is a concise public document stating what an agency's decision is on a specific action. The ROD may be integrated into any other document required to implement the agency's decision. A decision on a course of action may not be made until the later of the following dates:

(1) 90 days after publication of the DEIS; or

(2) 30 days after publication of the NOA of the Final EIS in the FEDERAL REGISTER.

(b) The Air Force must announce the ROD to the affected public as specified in § 989.24, except for classified portions. The ROD should be concise and should explain the conclusion, the reason for the selection, and the alternatives considered. The ROD must identify the course of action, whether it is the proposed action or an alternative, that is considered environmentally preferable regardless of whether it is the alternative selected for implementation. The ROD should summarize all the major factors the agency weighed in making its decision, including essential considerations of national policy.

(c) The ROD must state whether the selected alternative employs all practicable means to avoid, minimize, or

mitigate environmental impacts and, if not, explain why not.

[64 FR 38129, July 15, 1999, as amended at 66 FR 16868, Mar. 28, 2001; 72 FR 37106, July 9, 2007]

§ 989.22 Mitigation.

(a) When preparing EIAP documents, indicate clearly whether mitigation measures (40 CFR 1508.20) must be implemented for the alternative selected. If using Best Management Practices (BMPs), identify the specific BMPs being used and include those BMPs in the mitigation plan. Discuss mitigation measures in terms of "will" and "would" when such measures have already been incorporated into the proposal. Use terms like "may" and "could" when proposing or suggesting mitigation measures. Both the public and the Air Force community need to know what commitments are being considered and selected, and who will be responsible for implementing, funding, and monitoring the mitigation measures.

(b) The proponent funds and implements mitigation measures in the mitigation plan that is approved by the decision-maker. Where possible and appropriate because of amount, the proponent should include the cost of mitigation as a line item in the budget for a proposed project. The proponent must ensure compliance with mitigation requirements, monitoring their effectiveness, and must keep the EPF informed of the mitigation status. The EPF reports its status, through the MAJCOM, to HQ USAF/A7CI when requested. Upon request, the EPF must also provide the results of relevant mitigation monitoring to the public.

(c) The proponent may "mitigate to insignificance" potentially significant environmental impacts found during preparation of an EA, in lieu of preparing an EIS. The FONSI for the EA must include these mitigation measures. Such mitigations are legally binding and must be carried out as the proponent implements the project. If, for any reason, the project proponent later abandons or revises in environmentally adverse ways the mitigation commitments made in the FONSI, the proponent must prepare a supplemental EIAP document before continuing the project. If potentially significant environmental impacts would result from any project revisions, the proponent must prepare an EIS.

(d) For each FONSI or ROD containing mitigation measures, the proponent prepares a plan specifically identifying each mitigation, discussing how the proponent will execute the mitigations, identifying who will fund and implement the mitigations, and stating when the proponent will complete the mitigation. The mitigation plan will be forwarded, through the MAJCOM EPF to HQ USAF/A7CI for review within 90 days from the date of signature of the FONSI or ROD.

[64 FR 38129, July 15, 1999, as amended at 66 FR 16868, Mar. 28, 2001; 72 FR 37106, July 9, 2007]

§ 989.23 Contractor prepared documents.

All Air Force EIAP documents belong to and are the responsibility of the Air Force. EIAP correspondence and documents distributed outside of the Air Force should generally be signed out by Air Force personnel and documents should reflect on the cover sheet they are an Air Force document. Contractor preparation information should be contained within the document's list of preparers.

§ 989.24 Public notification.

(a) Except as provided in § 989.26, public notification is required for various aspects of the EIAP.

(b) Activities that require public notification include:

(1) An EA and FONSI.

(2) An EIS NOI.

(3) Public scoping meetings.

(4) Availability of the draft EIS.

(5) Public hearings on the draft EIS (which should be included in the NOA for the draft EIS).

(6) Availability of the final EIS.

(7) The ROD for an EIS.

(c) For actions of local concern, the list of possible notification methods in 40 CFR 1506.6(b)(3) is only illustrative. The EPF may use other equally effective means of notification as a substitute for any of the methods listed. Because many Air Force actions are of limited interest to persons or organizations outside the Air Force, the EPF

may limit local notification to the SPOC, local government representatives, and local news media. For all actions covered under § 989.15(e)(2), and for all EIS notices, the public affairs office must purchase with EPF funds an advertisement in a prominent section of the local newspaper(s) of general circulation (not "legal" newspapers or "legal section" of general newspapers).

(d) For the purpose of EIAP, the EPF begins the time period of local notification when it sends written notification to the state SPOC or other equivalent agency (date of letter of notification).

§ 989.25 Base closure and realignment.

Base closure or realignment may entail special requirements for environmental analysis. The permanent base closure and realignment law, 10 U.S.C. 2687, requires a report to the Congress when an installation where at least 300 DoD civilian personnel are authorized to be employed is closed, or when a realignment reduces such an installation by at least 50 percent or 1,000 of such personnel, whichever is less. In addition, other base closure laws may be in effect during particular periods. Such nonpermanent closure laws frequently contain provisions limiting the extent of environmental analysis required for actions taken under them. Such provisions may also add requirements for studies not necessarily required by NEPA.

§ 989.26 Classified actions (40 CFR 1507.3(c)).

(a) Classification of an action for national defense or foreign policy purposes does not relieve the requirement of complying with NEPA. In classified matters, the Air Force must prepare and make available normal NEPA environmental analysis documents to aid in the decision-making process; however, Air Force staff must prepare, safeguard, and disseminate these documents according to established procedures for protecting classified documents. If an EIAP document must be classified, the Air Force may modify or eliminate associated requirements for public notice (including publication in the FEDERAL REGISTER) or public involvement in the EIAP. However, the Air Force should obtain comments on classified proposed actions or classified aspects of generally unclassified actions, from public agencies having jurisdiction by law or special expertise, to the extent that such review and comment is consistent with security requirements. Where feasible, the EPF may need to help appropriate personnel from those agencies obtain necessary security clearances to gain access to documents so they can comment on scoping or review the documents.

(b) Where the proposed action is classified and unavailable to the public, the Air Force may keep the entire NEPA process classified and protected under the applicable procedures for the classification level pertinent to the particular information. At times (for example, during weapons system development and base closures and realignments), certain but not all aspects of NEPA documents may later be declassified. In those cases, the EPF should organize the EIAP documents, to the extent practicable, in a way that keeps the most sensitive classified information (which is not expected to be released at any early date) in a separate annex that can remain classified; the rest of the EIAP documents, when declassified, will then be comprehensible as a unit and suitable for release to the public. Thus, the documents will reflect, as much as possible, the nature of the action and its environmental impacts, as well as Air Force compliance with NEPA requirements.

(c) Where the proposed action is not classified, but certain aspects of it need to be protected by security classification, the EPF should tailor the EIAP for a proposed action to permit as normal a level of public involvement as possible, but also fully protect the classified part of the action and environmental analysis. In some instances, the EPF can do this by keeping the classified sections of the EIAP documents in a separate, classified annex.

(d) For § 989.26(b) actions, an NOI or NOA will not be published in the FEDERAL REGISTER until the proposed action is declassified. For § 989.26(c) actions, the FEDERAL REGISTER will run an unclassified NOA which will advise

the public that at some time in the future the Air Force may or will publicly release a declassified document.

(e) The EPF similarly protects classified aspects of FONSIs, RODs, or other environmental documents that are part of the EIAP for a proposed action, such as by preparing separate classified annexes to unclassified documents, as necessary.

(f) Whenever a proponent believes that EIAP documents should be kept classified, the EPF must make a report of the matter to SAF/IEE, including proposed modifications of the normal EIAP to protect classified information. The EPF may make such submissions at whatever level of security classification is needed to provide a comprehensive understanding of the issues. SAF/IEE, with support from SAF/GC and other staff elements as necessary, makes final decisions on EIAP procedures for classified actions.

[64 FR 38129, July 15, 1999, as amended at 72 FR 37106, July 9, 2007]

§ 989.27 Occupational safety and health.

Assess direct and indirect impacts of proposed actions on the safety and health of Air Force employees and others at a work site. The EIAP document does not need to specify compliance procedures. However, the EIAP documents should discuss impacts that require a change in work practices to achieve an adequate level of health and safety.

§ 989.28 Airspace and range proposals.

(a) *EIAP Review.* Airspace and range proposals require review by HQ USAF/XOO prior to public announcement and preparation of the DOPAA. Unless directed otherwise, the airspace proponent will forward the DOPAA as an attachment to the proposal sent to HQ USAF/XOO.

(b) *Federal Aviation Administration.* The DoD and the Federal Aviation Administration (FAA) have entered into a Memorandum of Understanding (MOU) that outlines various airspace responsibilities. For purposes of compliance with NEPA, the DoD is the "lead agency" for all proposals initiated by DoD, with the FAA acting as the "cooperating agency." Where airspace proposals initiated by the FAA affect military use, the roles are reversed. The proponent's action officers (civil engineering and local airspace management) must ensure that the FAA is fully integrated into the airspace proposal and related EIAP from the very beginning and that the action officers review the FAA's responsibilities as a cooperating agency. The proponent's airspace manager develops the preliminary airspace proposal per appropriate FAA handbooks and the FAA-DoD MOU. The preliminary airspace proposal is the basis for initial dialogue between DoD and the FAA on the proposed action. A close working relationship between DoD and the FAA, through the FAA regional Air Force representative, greatly facilitates the airspace proposal process and helps resolve many NEPA issues during the EIAP.

§ 989.29 Force structure and unit move proposals.

Unless directed otherwise, the MAJCOM plans and programs proponent will forward a copy of all EAs for force structure and unit moves to HQ USAF/A7CI for information only at the preliminary draft and preliminary final stages.

[64 FR 38129, July 15, 1999, as amended at 66 FR 16869, Mar. 28, 2001; 72 FR 37106, July 9, 2007]

§ 989.30 Air quality.

Section 176(c) of the Clean Air Act Amendments of 1990, 42 U.S.C. 7506(c), establishes a conformity requirement for Federal agencies which has been implemented by regulation, 40 CFR 93, subpart B. All EIAP documents must address applicable conformity requirements and the status of compliance. Conformity applicability analyses and determinations are developed in parallel with EIAP documents, but are separate and distinct requirements and should be documented separately. To increase the utility of a conformity determination in performing the EIAP, the conformity determination should be completed prior to the completion of the EIAP so as to allow incorporation of the information from the conformity determination into the EIAP.

See AFI 32–7040, Air Quality Compliance.[10]

§ 989.31 Pollution prevention.

The Pollution Prevention Act of 1990, 42 U.S.C. 13101(b), established a national policy to prevent or reduce pollution at the source, whenever feasible. Pollution prevention approaches should be applied to all pollution-generating activities. The environmental document should analyze potential pollution that may result from the proposed action and alternatives and must discuss potential pollution prevention measures when such measures are feasible for incorporation into the proposal or alternatives. Where pollution cannot be prevented, the environmental analysis and proposed mitigation measures should include, wherever possible, recycling, energy recovery, treatment, and environmentally safe disposal actions (see AFI 32–7080, Pollution Prevention Program[11]).

§ 989.32 Noise.

Aircraft noise data files used for analysis during EIAP will be submitted to HQ AFCEE for review and validation prior to public release, and upon completion of the EIAP for database entry. Utilize the current NOISEMAP computer program for air installations and the Assessment System for Aircraft Noise for military training routes and military operating areas. Guidance on standardized Air Force noise data development and analysis procedures is available from HQ AFCEE/TDB. Develop EIAP land use analysis relating to aircraft noise impacts originating from air installations following procedures in AFI 32–7063, Air Installation Compatible Use Zone (AICUZ) Program. Draft EIAP aircraft noise/land use analysis associated with air installations will be coordinated with the MAJCOM AICUZ program manager.

[64 FR 38129, July 15, 1999, as amended at 66 FR 16869, Mar. 28, 2001; 72 FR 37106, July 9, 2007]

§ 989.33 Environmental justice.

During the preparation of environmental analyses under this instruction, the EPF should ensure compliance with the provisions of E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and Executive Memorandum of February 11, 1994, regarding E.O. 12898.

§ 989.34 Special and emergency procedures.

(a) *Special procedures.* During the EIAP, unique situations may arise that require EIAP strategies different than those set forth in this part. These situations may warrant modification of the procedures in this part. EPFs should only consider procedural deviations when the resulting process would benefit the Air Force and still comply with NEPA and CEQ regulations. EPFs must forward all requests for procedural deviations to HQ USAF/A7CI (or ANGRC/CEV) for review and approval by SAF/IEE.

(b) *Emergency procedures (40 CFR 1506.11).* Emergency situations do not exempt the Air Force from complying with NEPA, but do allow emergency response while completing the EIAP. Certain emergency situations may make it necessary to take immediate action having significant environmental impact, without observing all the provisions of the CEQ regulations or this part. If possible, promptly notify HQ USAF/A7CI, for SAF/IEE coordination and CEQ consultation, before undertaking emergency actions that would otherwise not comply with NEPA or this part. The immediate notification requirement does not apply where emergency action must be taken without delay. Coordination in this instance must take place as soon as practicable.

[64 FR 38129, July 15, 1999, as amended at 66 FR 16869, Mar. 28, 2001; 72 FR 37106, July 9, 2007]

§ 989.35 Reporting requirements.

(a) EAs, EISs, and mitigation measures will be tracked at bases and MAJCOMs through an appropriate environmental management system.

(b) Proponents, EPFs, and public affairs offices may utilize the World Wide Web, in addition to more traditional means, to notify the public of availability of EAs and EISs. When possible,

[10] See footnote 1 to § 989.1.
[11] See footnote 1 to § 989.1.

allow distribution of documents electronically. Public review comments should be required in writing, rather than by electronic mail.

(c) All documentation will be disposed of according to AFMAN 37–139, Records Disposition Schedule.[12]

[64 FR 38129, July 15, 1999; 66 FR 16869, Mar. 28, 2001]

§ 989.36 Waivers.

In order to deal with unusual circumstances and to allow growth in the EIAP process, SAF/IEE may grant waivers to those procedures contained in this part not required by NEPA or the CEQ Regulations. Such waivers shall not be used to limit compliance with NEPA or the CEQ Regulations but only to substitute other, more suitable procedures relative to the context of the particular action. Such waivers may also be granted on occasion to allow experimentation in procedures in order to allow growth in the EIAP. This authority may not be delegated.

[64 FR 38129, July 15, 1999, as amended at 66 FR 16869, Mar. 28, 2001; 72 FR 37107, July 9, 2007]

§ 989.37 Procedures for analysis abroad.

Procedures for analysis of environmental actions abroad are contained in 32 CFR part 187. That directive provides comprehensive policies, definitions, and procedures for implementing E.O. 12114. For analysis of Air Force actions abroad, 32 CFR part 187 will be followed.

§ 989.38 Requirements for analysis abroad.

(a) The EPF will generally perform the same functions for analysis of actions abroad that it performs in the United States. In addition to the requirements of 32 CFR part 187, the following Air Force specific rules apply:

(b) For EAs dealing with global commons (geographic areas beyond the jurisdiction of the United States or any foreign nation), HQ USAF/A7CI will review actions that are above the MAJCOM approval authority. In this instance, approval authority refers to the same approval authority that would apply to an EA in the United States. The EPF documents a decision not to do an EIS.

(c) For EISs dealing with the global commons, the EPF provides sufficient copies to HQ USAF/A7CI for the HQ USAF ESOHC review and AFCEE/TDB technical review. After ESOHC review, the EPF makes a recommendation as to whether the proposed draft EIS will be released as a draft EIS.

(d) For environmental studies and environmental reviews, forward, when appropriate, environmental studies and reviews to HQ USAF/A7CI for coordination among appropriate federal agencies. HQ USAF/A7CI makes environmental studies and reviews available to the Department of State and other interested federal agencies, and, on request, to the United States public, in accordance with 32 CFR part 187. HQ USAF/A7CI also may inform interested foreign governments or furnish copies of studies, in accordance with 32 CFR part 187.

[64 FR 38129, July 15, 1999, as amended at 66 FR 16869, Mar. 28, 2001; 72 FR 37107, July 9, 2007]

APPENDIX A TO PART 989—GLOSSARY OF REFERENCES, ABBREVIATIONS, ACRONYMS, AND TERMS

References

Legislative

10 U.S.C. 2687, *Base Closures and Realignments*

42 U.S.C. 4321–4347, *National Environmental Policy Act of 1969*

42 U.S.C. 7506(c), *Clean Air Act Amendments of 1990*

42 U.S.C. 13101(b), *Pollution Prevention Act of 1990*

43 U.S.C. 155–158, *Engle Act*

Executive Orders

Executive Order 11988, *Floodplain Management,* May 24, 1977

Executive Order 11990, *Protection of Wetlands,* May 24, 1977

Executive Order 12088, *Federal Compliance with Pollution Control Standards.*

Executive Order 12114, *Environmental Effects Abroad of Major Federal Actions,* January 4, 1979

Executive Order 12372, *Intergovernmental Review of Federal Programs,* July 14, 1982

[12] See footnote 1 to § 989.1.

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, February 11, 1994

U.S. Government Agency Publications

Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 CFR parts 1500–1508

Department of Defense Directive DoDD 4715.1E, *Environment, Safety, and Occupational Health*

Department of Defense Directive (DoDD) 6050.7, *Environmental Effects Abroad of Major Department of Defense Actions*, March 31, 1979 (32 CFR part 187)

Department of Defense Instruction (DoDI) 4715.9, *Environmental Planning and Analysis*

Department of Defense Directive DoDD 5000.1, *The Defense Acquisition System*

Department of Defense Regulation 5000.2–R, *Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information System Acquisition Programs*

Air Force Publications

AFPD 32–70, *Environmental Quality*

AFI 32–1021, *Planning and Programming of Facility Construction Projects*

AFI 32–7002, *Environmental Information Management System*

AFI 32–7005, *Environmental Protection Committees*

AFI 32–7040, *Air Quality Compliance*

AFI 32–7062, *Air Force Comprehensive Planning*

AFI 32–7063, *Air Installation Compatible Use Zone Program*

AFI 32–7064, *Integrated Natural Resources Management*

AFI 32–7080, *Pollution Prevention Program*

AFI 35–101, *Public Affairs Policies and Procedures*

AFMAN 37–139, *Records Disposition Schedule*

Abbreviations and Acronyms

Abbreviation or Acronym	Definition
AFCEE	Air Force Center for Engineering and the Environment
AFCEE/TDB	AFCEE Technical Directorate, Built Infrastructure Division (AFCEE/TDB)
AFI	Air Force Instruction
AFLOA/JACE	Air Force Legal Services Agency/Environmental Law and Litigation Division
AFLOA/JAJT	Air Force Legal Services Agency/Trial Judiciary Division
AFMAN	Air Force Manual
AFMOA/SG	Air Force Medical Operations Agency/Aerospace Medicine Office
AFPD	Air Force Policy Directive
AFRES	Air Force Reserve
ANG	Air National Guard
ANGRC	Air National Guard Readiness Center
BMP	Best Management Practice
CATEX	Categorical Exclusion
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
DoD	Department of Defense
DoDD	Department of Defense Directive
DoDI	Department of Defense Instruction
DOPAA	Description of Proposed Action and Alternatives
EA	Environmental Assessment
EIAP	Environmental Impact Analysis Process
EIS	Environmental Impact Statement
E.O.	Executive Order
EPA	Environmental Protection Agency
EPC	Environmental Protection Committee
EPF	Environmental Planning Function
ESOHC	Environmental Safety and Occupational Health Committee
FAA	Federal Aviation Administration
FEIS	Final Environmental Impact Statement
FOA	Field Operating Agency
FONPA	Finding of No Practicable Alternative
FONSI	Finding of No Significant Impact
GSA	General Services Administration
HQ AFMC	Headquarters, Air Force Materiel Command
HQ USAF	Headquarters, United States Air Force
HQ USAF/A7C	The Air Force Civil Engineer
MAJCOM	Major Command
MGM	Materiel Group Manager
MOA	Military Operating Area
MOU	Memorandum of Understanding
MSL	Mean Sea Level
NEPA	National Environmental Policy Act of 1969
NGB-CF	National Guard Bureau Air Directorate
NGB-JA	National Guard Bureau Office of the Staff Judge Advocate
NGB-PA	National Guard Bureau Office of Public Affairs
NOA	Notice of Availability
NOI	Notice of Intent

Abbreviation or Acronym	Definition
OSD	Office of the Secretary of Defense
OSHA	Occupational Safety and Health Administration
PDEIS	Preliminary Draft Environmental Impact Statement
PGM	Product Group Manager
REO	Air Force Regional Environmental Office
ROD	Record of Decision
SAF/AQR	Deputy Assistant Secretary of the Air Force (Science, Technology, and Engineering)
SAF/GC	Air Force General Counsel
SAF/LL	Air Force Office of Legislative Liaison
SAF/IE	Assistant Secretary of the Air Force for Installations, Environment & Logistics
SAF/IEE	Deputy Assistant Secretary of the Air Force for Environment, Safety and Occupational Health (ESOH)
SAF/PA	Air Force Office of Public Affairs
SJA	Staff Judge Advocate
SM	Single Manager
SPD	Single Program Director
SPOC	Single Point of Contact
TDY	Temporary Duty
U.S.C.	United States Code

Terms

NOTE: All definitions in the CEQ Regulations, 40 CFR part 1508, apply to this part. In addition, the following definitions apply:

Best Management Practices (BMPs)—Under the EIAP, BMPs should be applied in furtherance of 32 CFR 989.22, Mitigations or to fulfill permit requirements (see also E.O. 12088, "Federal Compliance with Pollution Control Standards).

Description of Proposed Action and Alternatives (DOPAA)—An Air Force document that is the framework for assessing the environmental impact of a proposal. It describes the purpose and need for the action, the alternatives to be considered, and the rationale used to arrive at the proposed action. The DOPAA often unfolds as writing progresses. The DOPAA can change during the internal scoping and public scoping process, especially as ideas and issues become clearer, and as new information makes changes necessary.

Environmental Impact Analysis Process (EIAP)—The Air Force program that implements the requirements of NEPA and requirements for analysis of environmental effects abroad under E.O. 12114.

Finding of No Practicable Alternative (FONPA)—Finding contained in a FONSI or ROD, according to Executive Orders 11988 and 11990, that explains why there are no practicable alternatives to an action affecting a wetland or floodplain, based on appropriate EIAP analysis or other documentation.

Interdisciplinary—An approach to environmental analysis involving more than one discipline or branch of learning.

Pollution Prevention—"Source reduction," as defined under the Pollution Prevention Act, and other practices that reduce or eliminate pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or in the protection of natural resources by conservation.

Proponent—Any office, unit, or activity that proposes to initiate an action.

Scoping—A process for proposing alternatives to be addressed and for identifying the significant issues related to a proposed action. Scoping includes affirmative efforts to communicate with other federal agencies, state, Tribal, and local governments, and the public.

Single Manager—Any one of the Air Force designated weapon system program managers, that include System Program Directors (SPDs), Product Group Managers (PGMs), and Materiel Group Managers (MGMs).

United States—All states, commonwealths, the District of Columbia, territories and possessions of the United States, and all waters and airspace subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include American Samoa, Guam, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, Palmyra Island, the Virgin Islands, and Wake Island.

[64 FR 38129, July 15, 1999, as amended at 66 FR 16869, Mar. 28, 2001; 72 FR 37107, July 9, 2007]

APPENDIX B TO PART 989—CATEGORICAL EXCLUSIONS

A2.1. Proponent/EPF Responsibility

Although a proposed action may qualify for a categorical exclusion from the requirements for environmental impact analysis under NEPA, this exclusion does not relieve the EPF or the proponent of responsibility for complying with all other environmental requirements related to the proposal, including requirements for permits, and state regulatory agency review of plans.

A2.2. Additional Analysis

Circumstances may arise in which usually categorically excluded actions may have a significant environmental impact and, therefore, may generate a requirement for further environmental analysis. Examples of situations where such unique circumstances may be present include:

A2.2.1. Actions of greater scope or size than generally experienced for a particular category of action.

A2.2.2. Potential for degradation (even though slight) of already marginal or poor environmental conditions.

A2.2.3. Initiating a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

A2.2.4. Use of unproved technology.

A2.2.5. Use of hazardous or toxic substances that may come in contact with the surrounding environment.

A2.2.6. Presence of threatened or endangered species, archaeological remains, historical sites, or other protected resources.

A2.2.7. Proposals adversely affecting areas of critical environmental concern, such as prime or unique agricultural lands, wetlands, coastal zones, wilderness areas, floodplains, or wild and scenic river areas.

A2.2.8. Proposals with disproportionately high and adverse human health or environmental effects on minority populations or low-income populations.

A2.3. CATEX List

Actions that are categorically excluded in the absence of unique circumstances are:

A2.3.1. Routine procurement of goods and services.

A2.3.2. Routine Commissary and Exchange operations.

A2.3.3. Routine recreational and welfare activities.

A2.3.4. Normal personnel, fiscal or budgeting, and administrative activities and decisions including those involving military and civilian personnel (for example, recruiting, processing, paying, and records keeping).

A2.3.5. Preparing, revising, or adopting regulations, instructions, directives, or guidance documents that do not, themselves, result in an action being taken.

A2.3.6. Preparing, revising, or adopting regulations, instructions, directives, or guidance documents that implement (without substantial change) the regulations, instructions, directives, or guidance documents from higher headquarters or other Federal agencies with superior subject matter jurisdiction.

A2.3.7. Continuation or resumption of preexisting actions, where there is no substantial change in existing conditions or existing land uses and where the actions were originally evaluated in accordance with applicable law and regulations, and surrounding circumstances have not changed.

A2.3.8. Performing interior and exterior construction within the 5-foot line of a building without changing the land use of the existing building.

A2.3.9. Repairing and replacing real property installed equipment.

A2.3.10. Routine facility maintenance and repair that does not involve disturbing significant quantities of hazardous materials such as asbestos and lead-based paint.

A2.3.11. Actions similar to other actions which have been determined to have an insignificant impact in a similar setting as established in an EIS or an EA resulting in a FONSI. The EPF must document application of this CATEX on AF Form 813, specifically identifying the previous Air Force approved environmental document which provides the basis for this determination.

A2.3.12. Installing, operating, modifying, and routinely repairing and replacing utility and communications systems, data processing cable, and similar electronic equipment that use existing rights of way, easements, distribution systems, or facilities.

A2.3.13. Installing or modifying airfield operational equipment (such as runway visual range equipment, visual glide path systems, and remote transmitter or receiver facilities) on airfield property and usually accessible only to maintenance personnel.

A2.3.14. Installing on previously developed land, equipment that does not substantially alter land use (i.e., land use of more than one acre). This includes outgrants to private lessees for similar construction. The EPF must document application of this CATEX on AF Form 813.

A2.3.15. Laying-away or mothballing a production facility or adopting a reduced maintenance level at a closing installation when (1) agreement on any required historic preservation effort has been reached with the state historic preservation officer and the Advisory Council on Historic Preservation, and (2) no degradation in the environmental restoration program will occur.

A2.3.16. Acquiring land and ingrants (50 acres or less) for activities otherwise subject to CATEX. The EPF must document application of this CATEX on AF Form 813.

A2.3.17. Transferring land, facilities, and personal property for which the General Services Administration (GSA) is the action agency. Such transfers are excluded only if there is no change in land use and GSA complies with its NEPA requirements.

A2.3.18. Transferring administrative control of real property within the Air Force or to another military department or to another Federal agency, not including GSA, including returning public domain lands to the Department of the Interior.

A2.3.19. Granting easements, leases, licenses, rights of entry, and permits to use

Air Force controlled property for activities that, if conducted by the Air Force, could be categorically excluded in accordance with this Appendix. The EPF must document application of this CATEX on AF Form 813.

A2.3.20. Converting in-house services to contract services.

A2.3.21. Routine personnel decreases and increases, including work force conversion to either on-base contractor operation or to military operation from contractor operation (excluding base closure and realignment actions which are subject to congressional reporting under 10 U.S.C. 2687).

A2.3.22. Routine, temporary movement of personnel, including deployments of personnel on a TDY basis where existing facilities are used.

A2.3.23. Personnel reductions resulting from workload adjustments, reduced personnel funding levels, skill imbalances, or other similar causes.

A2.3.24. Study efforts that involve no commitment of resources other than personnel and funding allocations.

A2.3.25. The analysis and assessment of the natural environment without altering it (inspections, audits, surveys, investigations). This CATEX includes the granting of any permits necessary for such surveys, provided that the technology or procedure involved is well understood and there are no adverse environmental impacts anticipated from it. The EPF must document application of this CATEX on AF Form 813.

A2.3.26. Undertaking specific investigatory activities to support remedial action activities for purposes of cleanup of Environmental Restoration Account (ERA)—Air Force and Resource Conservation and Recovery Act (RCRA) corrective action sites. These activities include soil borings and sampling, installation, and operation of test or monitoring wells. This CATEX applies to studies that assist in determining final cleanup actions when they are conducted in accordance with legal agreements, administrative orders, or work plans previously agreed to by EPA or state regulators.

A2.3.27. Normal or routine basic and applied scientific research confined to the laboratory and in compliance with all applicable safety, environmental, and natural resource conservation laws.

A2.3.28. Routine transporting of hazardous materials and wastes in accordance with applicable Federal, state, interstate, and local laws.

A2.3.29. Emergency handling and transporting of small quantities of chemical surety material or suspected chemical surety material, whether or not classified as hazardous or toxic waste, from a discovery site to a permitted storage, treatment, or disposal facility.

A2.3.30. Immediate responses to the release or discharge of oil or hazardous materials in accordance with an approved Spill Prevention and Response Plan or Spill Contingency Plan or that are otherwise consistent with the requirements of the National Contingency Plan.

A2.3.31. Relocating a small number of aircraft to an installation with similar aircraft that does not result in a significant increase of total flying hours or the total number of aircraft operations, a change in flight tracks, or an increase in permanent personnel or logistics support requirements at the receiving installation. Repetitive use of this CATEX at an installation requires further analysis to determine there are no cumulative impacts. The EPF must document application of this CATEX on AF Form 813.

A2.3.32. Temporary (for less than 30 days) increases in air operations up to 50 percent of the typical installation aircraft operation rate or increases of 50 operations a day, whichever is greater. Repetitive use of this CATEX at an installation requires further analysis to determine there are no cumulative impacts.

A2.3.33. Flying activities that comply with the Federal aviation regulations, that are dispersed over a wide area and that do not frequently (more than once a day) pass near the same ground points. This CATEX does not cover regular activity on established routes or within special use airspace.

A2.3.34. Supersonic flying operations over land and above 30,000 feet MSL, or over water and above 10,000 feet MSL and more than 15 nautical miles from land.

A2.3.35. Formal requests to the FAA, or host-nation equivalent agency, to establish or modify special use airspace (for example, restricted areas, warning areas, military operating areas) and military training routes for subsonic operations that have a base altitude of 3,000 feet above ground level or higher. The EPF must document application of this CATEX on AF Form 813, which must accompany the request to the FAA.

A2.3.36. Adopting airfield approach, departure, and en route procedures that are less than 3,000 feet above ground level, and that also do not route air traffic over noise-sensitive areas, including residential neighborhoods or cultural, historical, and outdoor recreational areas. The EPF may categorically exclude such air traffic patterns at or greater than 3,000 feet above ground level regardless of underlying land use.

A2.3.37. Participating in "air shows" and fly-overs by Air Force aircraft at non-Air Force public events after obtaining FAA coordination and approval.

A2.3.38. Conducting Air Force "open houses" and similar events, including air shows, golf tournaments, home shows, and the like, where crowds gather at an Air

Force installation, so long as crowd and traffic control, etc., have not in the past presented significant safety or environmental impacts.

[64 FR 38129, July 15, 1999, as amended at 66 FR 16869, Mar. 28, 2001]

EDITORIAL NOTE: At 72 FR 37107, July 9, 2007, appendix B to part 989 was amended by revising "AFLSA/JAJT" to read "AFLOA/JAJT" in A3.1.1 and A3.1.2. However, the amendment could not be made because appendix B did not contain such sections.

APPENDIX C TO PART 989—PROCEDURES FOR HOLDING PUBLIC HEARINGS ON DRAFT ENVIRONMENTAL IMPACT STATEMENTS (EIS)

A.3.1. General Information

A3.1.1. The Office of the Judge Advocate General, through the Air Force Legal Services Agency/Trial Judiciary Division (AFLSA/JAJT) and its field organization, is responsible for conducting public hearings and assuring verbatim transcripts are accomplished.

A3.1.2. The EPF, with proponent, AFLSA/JAJT, and Public Affairs support, establishes the date and location, arranges for hiring the court reporter, funds temporary duty costs for the hearing officer, makes logistical arrangements (for example, publishing notices, arranging for press coverage, obtaining tables and chairs, etc.).

A3.1.3. The procedures outlined below have proven themselves through many prior applications. However, there may be rare instances when circumstances warrant conducting public hearings under a different format, e.g., public/town meeting, information booths, third party moderator, etc. In these cases, forward a request with justification to deviate from these procedures to HQ USAF/A7CI for SAF/IEE approval.

A3.2. Notice of Hearing (40 CFR 1506.6)

A3.2.1. Public Affairs officers:

A3.2.1.1. Announce public hearings and assemble a mailing list of individuals to be invited.

A3.2.1.2. Distribute announcements of a hearing to all interested individuals and agencies, including the print and electronic media.

A3.2.1.3. Place a newspaper display advertisement announcing the time and place of the hearing as well as other pertinent particulars.

A3.2.1.4. Distribute the notice in a timely manner so it will reach recipients or be published at least 15 days before the hearing date. Distribute notices fewer than 15 days before the hearing date when you have substantial justification and if the justification for a shortened notice period appears in the notice.

A3.2.1.5. Develop and distribute news release.

A3.2.2. If an action has effects of national concern, publish notices in the FEDERAL REGISTER and mail notices to national organizations that have an interest in the matter.

A3.2.2.1. Because of the longer lead time required by the FEDERAL REGISTER, send out notices for publication in the FEDERAL REGISTER to arrive at HQ USAF/A7CI no later than 30 days before the hearing date.

A3.2.3. The notice should include:

A3.2.3.1. Date, time, place, and subject of the hearing.

A3.2.3.2. A description of the general format of the hearing.

A3.2.3.3. The name, address, and telephone number of the Air Force point of contact.

A3.2.3.4. A suggestion that speakers submit (in writing or by return call) their intention to participate, with an indication of which environmental impact (or impacts) they wish to address.

A3.2.3.5. Any limitation on the length of oral statements.

A3.2.3.6. A suggestion that speakers submit statements of considerable length in writing.

A3.2.3.7. A summary of the proposed action.

A3.2.3.8. The location where the draft EIS and any appendices are available for examination.

A.3.3. Availability of the Draft EIS to the Public

The EPF makes copies of the Draft EIS available to the public at an Air Force installation and other reasonably accessible place in the vicinity of the proposed action and public hearing (e.g., public library).

A3.4. Place of the Hearing

The EPF arranges to hold the hearing at a time and place and in an area readily accessible to military and civilian organizations and individuals interested in the proposed action. Generally, the EPF should arrange to hold the hearing in an off-base civilian facility, which is more accessible to the public.

A3.5. Hearing Officer

A3.5.1. The AFLOA/JAJT selects a hearing officer to preside over hearings. The hearing officer does not need to have personal knowledge of the project, other than familiarity with the Draft EIS. In no event should the hearing officer be a judge advocate from the proponent or subordinate command, be assigned to the same installation with which the hearing is concerned, or have participated personally in the development of the project, or have rendered legal advice or assistance with respect to it (or be expected to

do so in the future). The principal qualification of the hearing officer should be the ability to conduct a hearing as an impartial participant.

A3.5.2. The primary duties of the hearing officer are to make sure that the hearing is orderly, is recorded, and that interested parties have a reasonable opportunity to speak. The presiding officer should direct the speakers' attention to the purpose of the hearing, which is to consider the environmental impacts of the proposed project. Speakers should have a time limit to ensure maximum public input to the decision-maker.

A3.6. Record of the Hearing

The EIS preparation team must make sure a verbatim transcribed record of the hearing is prepared, including all stated positions, all questions, and all responses. The EIS preparation team should append all written submissions that parties provide to the hearing officer during the hearing to the record as attachments. The EIS preparation team should also append a list of persons who spoke at the hearing and submitted written comments and a list of the organizations or interests they represent with addresses. The EIS preparation team must make sure a verbatim transcript of the hearing is provided to the EPF for inclusion as an appendix to the Final EIS. The officer should also ensure that all persons who request a copy of the transcript get a copy when it is completed. Copying charges are determined according to 40 CFR 1506.6(f).

A3.7. Hearing Format

Use the format outlined below as a general guideline for conducting a hearing. Hearing officers should tailor the format to meet the hearing objectives. These objectives provide information to the public, record opinions of interested persons on environmental impacts of the proposed action, and set out alternatives for improving the EIS and for later consideration.

A3.7.1. Record of Attendees. The hearing officer should make a list of all persons who wish to speak at the hearing to help the hearing officer in calling on these individuals, to ensure an accurate transcript of the hearing, and to enable the officer to send a copy of the Final EIS (40 CFR 1502.19) to any person, organization, or agency that provided substantive comments at the hearing. The hearing officer should assign assistants to the entrance of the hearing room to provide cards on which individuals can voluntarily write their names, addresses, telephone numbers, organizations they represent, and titles; whether they desire to make a statement at the hearing; and what environmental area(s) they wish to address. The hearing officer can then use the cards to call on individuals who desire to make statements. However, the hearing officer will not deny entry to the hearing or the right to speak to people who decline to submit this information on cards.

A3.7.2. Introductory Remarks. The hearing officer should first introduce himself or herself and the EIS preparation team. Then the hearing officer should make a brief statement on the purpose of the hearing and give the general ground rules on how it will be conducted. This is the proper time to welcome any dignitaries who are present. The hearing officer should explain that he or she does not make any recommendation or decision on whether the proposed project should be continued, modified, or abandoned or how the EIS should be prepared.

A3.7.3. Explanation of the Proposed Action. The Air Force EIS preparation team representative should next explain the proposed action, the alternatives, the potential environmental consequences, and the EIAP.

A3.7.4. Questions by Attendees. After the EIS team representative explains the proposed action, alternatives, and consequences, the hearing officer should give attendees a chance to ask questions to clarify points they may not have understood. The EIS preparation team may have to reply in writing, at a later date, to some of the questions. While the Air Force EIS preparation team should be as responsive as possible in answering questions about the proposal, they should not become involved in debate with questioners over the merits of the proposed action. Cross-examination of speakers, either those of the Air Force or the public, is not the purpose of an informal hearing. If necessary, the hearing officer may limit questioning or conduct portions of the hearing to ensure proper lines of inquiry. However, the hearing officer should include all questions in the hearing record.

A3.7.5. Statement of Attendees. The hearing officer must give the persons attending the hearing a chance to present oral or written statements. The hearing officer should be sure the recorder has the name and address of each person who submits an oral or written statement. The officer should also permit the attendees to submit written statements within a reasonable time, usually two weeks, following the hearing. The officer should allot a reasonable length of time at the hearing for receiving oral statements. The officer may waive any announced time limit at his or her discretion. The hearing officer may allow those who have not previously indicated a desire to speak to identify themselves and be recognized only after those who have previously indicated their intentions to speak have spoken.

A3.7.6. Ending or Extending a Hearing. The hearing officer has the power to end the hearing if the hearing becomes disorderly, if the speakers become repetitive, or for other

good cause. In any such case, the hearing officer must make a statement for the record on the reasons for terminating the hearing. The hearing officer may also extend the hearing beyond the originally announced date and time. The officer should announce the extension to a later date or time during the hearing and prior to the hearing if possible.

A3.8. Adjourning the Hearing

After all persons have had a chance to speak, when the hearing has culled a representative view of public opinion, or when the time set for the hearing and any reasonable extension of time has ended, the hearing officer adjourns the hearing. In certain circumstances (for example, if the hearing officer believes it is likely that some participants will introduce new and relevant information), the hearing officer may justify scheduling an additional, separate hearing session. If the hearing officer makes the decision to hold another hearing while presiding over the original hearing he or she should announce that another public hearing will be scheduled or is under consideration. The officer gives notice of a decision to continue these hearings in essentially the same way he or she announced the original hearing, time permitting. The Public Affairs officer provides the required public notices and directs notices to interested parties in coordination with the hearing officer. Because of lead-time constraints, SAF/IEE may waive FEDERAL REGISTER notice requirements or advertisements in local publications. At the conclusion of the hearing, the hearing officer should inform the attendees of the deadline (usually 2 weeks) to submit additional written remarks in the hearing record. The officer should also notify attendees of the deadline for the commenting period of the Draft EIS.

[64 FR 38129, July 15, 1999, as amended at 66 FR 16869, Mar. 28, 2001, as amended at 66 FR 31177, June 11, 2001; 72 FR 37107, July 9, 2007]

Subtitle B—Other Regulations Relating to National Defense

CHAPTER XII—DEFENSE LOGISTICS AGENCY

SUBCHAPTER A [RESERVED]

SUBCHAPTER B—MISCELLANEOUS

Part		*Page*
1280	Investigating and processing certain noncontractual claims and reporting related litigation	267
1285	Defense Logistics Agency Freedom of Information Act Program	270
1288	Registration of privately owned motor vehicles	289
1290	Preparing and processing minor offenses and violation notices referred to U.S. District Courts	291
1292	Security of DLA activities and resources	299

SUBCHAPTER A [RESERVED]
SUBCHAPTER B—MISCELLANEOUS

PART 1280—INVESTIGATING AND PROCESSING CERTAIN NONCONTRACTUAL CLAIMS AND REPORTING RELATED LITIGATION

Sec.
1280.1 Purpose and scope.
1280.2 Definitions.
1280.3 Significant changes.
1280.4 Responsibilities.
1280.5 Procedures.

AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 125; 28 U.S.C. 2672; and DoD Directive 5105.22 dated December 9, 1965.

SOURCE: 39 FR 19470, June 3, 1974, unless otherwise noted.

§ 1280.1 Purpose and scope.

(a) This part 1280 provides procedures for investigating and processing claims and related litigation:

(1) By civilian and military personnel of DLA for property lost or damaged incident to service (31 U.S.C. 240 through 243).

(2) Incident to use of Government vehicles and other property of the United States not cognizable under other law (10 U.S.C. 2737).

(3) Based on Negligence of Civilian and Military Employees under the Federal Tort Claims Act, 28 U.S.C. 1346(b), 2671 through 2680.

(4) In favor of the United States, other than contractual, for loss, damage, or destruction of real or personal property in the possession, custody, or control of DLA.

(b) This part 1280 is applicable to HQ DLA and DLA field activities, except nonappropriated funds and related activities established pursuant to DSAR 1330.2, Open Messes and Other Military Sundry Associations and Funds, and DSAR 1330.4, Civilian Nonappropriated Funds and Related Activities. Claims involving these activities are processed pursuant to the regulations referenced therein.

§ 1280.2 Definitions.

(a) *Claims Investigating Officer*. A military officer or civilian employee of DLA, appointed in accordance with this part 1280, to investigate and process claims within the purview of this part 1280.

(b) *Member of the Army, member of the Navy, member of the Marine Corps, member of the Air Force*. Officers and enlisted personnel of these Military Services.

§ 1280.3 Significant changes.

This revision provides current citations to the Army regulations which have superseded those previously prescribed for the processing of some claims. It reflects the new Army claims processing procedures effected upon the reorganization of the Army. Finally, it provides specific procedures for Air Force processed claims.

§ 1280.4 Responsibilities.

(a) *DLA field activities*. (1) Heads of DLA Primary Level Field Activities are responsible for:

(i) Designating a qualified individual under their command, preferably one experienced in the conduct of investigations, as the Claims Investigating Officer for the activity.

(ii) Authorizing Heads of subordinate activities to appoint Claims Investigating Officers where necessary.

(2) The Commander, DLA Administrative Support Center (DLASC) is responsible for designating a qualified individual, preferably one experienced in the conduct of investigations, as the Claims Investigating Officer for DLASC and HQ DLA.

(3) Claims Investigating Officers are responsible for the expeditious conduct of all investigations and the processing of reports in accordance with appropriate Departmental regulations as prescribed by this part 1280. To ensure prompt investigation of every incident while witnesses are available, and before damage has been repaired, the duties of personnel as Claims Investigating Officers will ordinarily have priority over any other assignments they may have.

(4) The Counsel, DLA Field Activities are responsible for:

(i) Receiving claims reports and information about related litigation, and processing these reports and information in accordance with this part 1280 and appropriate Departmental regulations.

(ii) Providing directions and guidance to Claims Investigating Officers in the investigation and processing of claims.

(b) The Counsel, DLA (DLAH-G) is responsible for:

(1) Providing guidance to Counsel at DLA field activities on all claims and litigation matters within the purview of this part 1280.

(2) Receiving claims reports and information on related litigation forwarded to HQ DLA, Attention: DLAH-G, and processing these in accordance with this part 1280 and appropriate Departmental regulations.

(3) Maintaining this part 1280 in a current status and reviewing it annually.

§ 1280.5 Procedures.[1]

(a) *Claims by military and civilian personnel of DLA for property lost or damaged incident to service (31 U.S.C. 240 through 243).* (1) The Claims Investigating Officer will conduct his investigation and prepare all necessary forms and reports in accordance with the appropriate portions of AR 27–20 where the claimant is a member of the Army or a DLA civilian employee; JAGINST 5800.7A where the claimant is a member of the Navy or Marine Corps; or AFM 112–1 where the claimant is a member of the Air Force.

(2) The completed report will be forwarded by the Claims Investigating Officer to one of the following activities for settlement:

(i) Where the claimant is a DLA civilian employee or a member of the Army; the Staff Judge Advocate designated in AR 27–20, appendix F, as the Area Claims Authority where the claim arose.

(ii) Where the claimant is a member of the Navy or Marine Corps the cognizant adjudicating authority as listed in JAGINST 5800.7A, paragraph 2124.

(iii) Where the claimant is a member of the Air Force; the Base Staff Judge Advocate of the nearest Air Force Base.

(b) *Claims incident to the use of Government property not cognizable under any other law (10 U.S.C. 2737).* (1) The Claims Investigating Officer will conduct his investigation and prepare all necessary forms and reports in accordance with the appropriate portions of AR 27–20 where the claimant is a member of the Army or a DLA civilian employee; JAGINST 5800.7A where the claimant is a member of the Navy or Marine Corps; or AFM 112–1 where the claimant is a member of the Air Force.

(2) The completed report will be forwarded by the Claims Investigating Officer to the Counsel for his activity or, if the activity has no Counsel, to the next higher echelon having such a position.

(3) The activity Counsel receiving the Claims Investigating Officer's report will review the report, and take all necessary action to assure that it is complete and in accordance with the appropriate regulation. He will forward the report together with his comments and recommendations to one of the following activities for settlement. Where the incident giving rise to the claim was occasioned by an act or omission of:

(i) *DLA civilian personnel.* Counsel, DLA.

(ii) *A member of the Army.* The Staff Judge Advocate designated in AR 27–20, appendix F, as the Area Claims Authority where the claim arose.

(iii) *A member of the Navy or Marine Corps.* The Director of the Navy Law Center in the Naval District in which the incident giving rise to the claim occurred.

(iv) *A member of the Air Force.* The Base Staff Judge Advocate of the Air Force Base nearest the place where the incident giving rise to the claim occurred.

(c) *Claims under the Federal Tort Claims Act arising from negligence of DLA military or civilian personnel.* (1) The Claims Investigating Officer will conduct his investigation and prepare

[1] Copies of the Military Department regulations mentioned herein may be obtained from the Departments of the Army and Navy, and the Superintendent of Documents, U.S. Government Printing Office.

all necessary forms and reports in accordance with the appropriate portions of AR 27–20 where the claim involves a member of the Army or a DLA civilian employee; JAGINST 5800.7A where the claim involves a member of the Navy or Marine Corps; or AFM 112–1 where the claim involves a member of the Air Force.

(2) The completed report of investigation will be forwarded by the Claims Investigating Officer to one of the following activities for settlement. Where the incident giving rise to the claim was occasioned by an act or omission of:

(i) *DLA civilian personnel or a member of the Army*. The Staff Judge Advocate designated in AR 27–20, appendix F, as the Area Claims Authority where the incident giving rise to the claim occurred.

(ii) *A member of the Navy or Marine Corps*. The Director of the Navy Law Center in the Naval District in which the incident giving rise to the claim occurred.

(iii) *A member of the Air Force*. The Base Staff Judge Advocate of the Air Force Base nearest the place where the incident giving rise to the claim occurred.

(d) *Tort claims in favor of the United States for damage to or loss or destruction of DLA property, or property in its custody or control*. (1) These claims will be investigated and processed in accordance with the provisions of AR 27–40, Chapter 5, except:

(i) The duties of the claims officer will be performed by the Claims Investigating Officer.

(ii) The duties of the Staff Judge Advocate will be performed by Counsel, except where the property is a GSA motor pool system vehicle (see paragraph (e) of this section).

(iii) The reports of the Claims Investigating Officer will be furnished direct to Counsel for his activity or, if his activity has no Counsel, to the next higher echelon having such a position.

(iv) With respect to reports referred to them, Counsel are authorized to give receipts for any payments received and to execute releases where payment in full is received, except where the property is a GSA motor pool system vehicle (see paragraph (e) of this section). Offers of compromise will be processed pursuant to DSAM 7000.1, chapter 12, section V, paragraph 120502.

(v) Where payment in full is not received after reasonable efforts have been made to collect the claim administratively, Counsel will refer the case directly to the U.S. Attorney unless:

(*a*) The amount of the claim exceeds $10,000, in which event the case will be referred to Counsel, DLA.

(*b*) The amount of the debt is less than $250; or the record clearly shows that the debtor is unable to pay; or the debtor cannot be located; in which event the file may be closed and the debt treated as an uncollectable which does not have to be referred to the General Accounting Office.

(2) If, at any stage of the processing of a claim under this paragraph (d), a claim is filed against the Government arising out of the same incident, or it becomes apparent that one will be filed, the claim under this paragraph (d) will be treated as a counterclaim, and included under the report filed in accordance with the applicable paragraph of this part 1280.

(e) *Claims involving GSA motor pool system vehicles*. (1) Where a motor pool system vehicle issued to a DLA activity is involved in an accident giving rise to a claim under the Federal Tort Claims Act, the claim will be handled pursuant to paragraph (c) of this section.

(2) In the event of damage to a motor pool system vehicle which is not due to the fault of the operator, Counsel receiving the report will submit the report to GSA's Regional Counsel for the region that issued the vehicle pursuant to the Federal Property Management Regulation, §101–39.805. Damages to motor pool system vehicles caused by the negligence of vehicle operator employed by DLA or caused by the negligence or misconduct of any other officer or employee of DLA are reimbursed to General Services Administration (GSA). Determination affixing responsibility will be made by the Counsel to which the report is referred, after considering the views of GSA.

(f) *Reporting legal proceedings*. (1) All process and pleadings served on any personnel or activity of DLA, and related to a claim covered by this part

1280 or involving an incident which may give rise to a claim covered by this part 1280, together with other immediately available data concerning the commencement of legal proceedings, will be promptly referred to Counsel for the activity involved, or, if the activity has no Counsel, to the next higher echelon having such a position.

(2) Any Military Service member or civilian employee of DLA (or his personal representative) against whom a domestic civil action or proceeding is brought for damage to property, or for personal injury or death, on account of his operation of a motor vehicle (Government- or privately-owned) in the scope of his employment (28 U.S.C. 2679) will:

(i) Upon receipt of process and pleadings or any other information regarding the commencement of such action or proceeding, immediately inform the Head of his activity and Counsel as specified in paragraph (f)(1) of this section.

(ii) Promptly deliver all process and pleadings served upon him, or an attested true copy thereof, to Counsel.

(3) Upon receipt of information or process and pleadings pursuant to paragraph (f)(1) or (2) of this section, Counsel will promptly prepare and process reports in accordance with the appropriate portions of AR 27–40 except that:

(i) If the incident giving rise to the litigation was occasioned by an act or omission of a member of the Navy or Marine Corps, or a member of the Air Force, information and reports required to be furnished to The Judge Advocate General of the Army will be furnished instead to The Judge Advocate General of the Navy and Air Force respectively.

(ii) If the litigation is under the Federal Tort Claims Act and no administrative claim has been filed, Counsel will immediately advise the U.S. Attorney and furnish him a report of all information the activity has with respect to the claim and an affidavit by the Claims Investigating Officer to the effect that no administrative claim has been filed. Two copies of the foregoing will be provided to the appropriate Military Service Judge Advocate General. If an administrative claim has been filed and has been referred to a Military Service, a copy of the process and pleadings and any information not previously furnished will be sent to the appropriate Military Service Judge Advocate General.

PART 1285—DEFENSE LOGISTICS AGENCY FREEDOM OF INFORMATION ACT PROGRAM

Sec.

1285.1 Purpose and scope.
1285.2 Policy.
1285.3 Definitions.
1285.4 Responsibilities.
1285.5 Procedures.
1285.6 Fees and fee waivers.
1285.7 Reports.
APPENDIX A TO PART 1285—GAINING ACCESS TO DLA RECORDS

AUTHORITY: 5 U.S.C. 552.

SOURCE: 56 FR 65423, Dec. 17, 1991, unless otherwise noted.

§ 1285.1 Purpose and scope.

This rule provides policies and procedures for the DLA implementation of DoD 5400.7–R,[1] DoD Freedom of Information Act Program. It applies to HQ DLA and all DLA field activities and takes precedence over all DLA regulations that supplement the FOIA program. A list of mailing addresses for DLA activities is provided at appendix A to this part.

§ 1285.2 Policy.

(a) *General*. The public has a right to information concerning the activities of its Government. DLA policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A DLA record requested by a member of the public who follows rules established herein shall be withheld only when it is exempt from mandatory public disclosure

[1] Copies may be obtained, at cost, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161–2171.

under the FOIA. In order that the public may have timely information concerning DLA activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information should continue to be honored through appropriate means even though the request does not qualify under FOIA requirements.

(b) *Control system.* A request for records that invokes the FOIA shall enter a formal control system designed to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this rule. Any request for DLA records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this rule, unless otherwise required by paragraph (m) of this section.

(c) *Compliance with the FOIA.* DLA personnel are expected to comply with the FOIA and this rule in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DLA FOIA program and to create conditions that will promote public trust. To promote a positive attitude among DLA personnel, each DLA Primary Level Field Activity (PLFA) will establish education and training programs described in part 286, subpart H, of this title. Training materials, including supplements, will be coordinated with DLA-XAM prior to publication or issuance.

(d) *Openness with the public.* DLA shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated herein, whether or not the Act is invoked.

(e) *Avoidance of procedural obstacles.* DLA activities shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DLA records promptly. DLA activities shall provide assistance to requesters to help them understand and comply with procedures established by this rule and any rules published by the DLA PLFA's.

(f) *Prompt action on requests.* When a member of the public complies with the procedures established in this rule for obtaining DLA records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days unless a delay is authorized. When a DLA activity has a significant number of requests, e.g., 10 or more, the requests shall be processed in order of receipt. However, this does not preclude an activity from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. A DLA activity may expedite action on a request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need or urgency is determined at the discretion of the activity processing the request.

(g) *Public domain.* Nonexempt records released under the authority of this rule are considered to be in the public domain. Such records may also be made available in reading rooms to facilitate public access. Exempt records released pursuant to this rule or other statutory or regulatory authority, however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this rule apply if the same individual seeks the records in a private or personal capacity.

(h) *Creating a record.* (1) There is no obligation to create nor compile a record to satisfy an FOIA request. A DLA activity, however, may compile a new record when doing so would result

in a more useful response to the requester or be less burdensome to the activity provided the requester does not object. The cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record. Fee assessments shall be in accordance with §1285.6 of this part and part 286, subpart F, of this title.

(2) With respect to electronic data, the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, DLA activities should apply a standard of reasonableness. In other words, if the capability exists to respond to the request and the effort would be a business-as-usual approach, then the request should be processed. However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business-as-usual approach.

(i) *Description of the requested record.* (1) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record that enables DLA to locate the record with a reasonable amount of effort. When a DLA activity receives a request that does not reasonably describe the requested record, it shall notify the requester of the defect. The requester may be asked to provide the type of information outlined in paragraph (i)(2) of this section. Activities are not obligated to act on the request until the requester responds to the specificity letter. When practicable, DLA activities shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act.

(2) The following guidelines are provided to deal with "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(3) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, nonrandom search based on the activity's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search. The decision of the DLA activity concerning reasonableness of description must be based on knowledge of its files. If the description enables DLA activity personnel to locate the record with reasonable effort, the description is adequate.

(4) The following guidelines deal with requests for personal records. Ordinarily, when only personal identifiers are provided in connection with a request for records concerning the requester, then only records retrievable by personal identifiers need be searched. The search for such records may be conducted under Privacy Act procedures contained in DLAR 5400.21.[2] No record may be denied that is releasable under the FOIA.

(j) *Possession and control.* A record must exist and be in the possession and control of DLA at the time of the search to be considered subject to this rule and the FOIA. Mere possession of a record does not presume Agency control. Information created or originated by another activity shall be referred to that activity for release determination and direct response to the requester.

(1) *Referring requests.* A DLA activity having no responsive records to an FOIA request may refer the request to another DLA activity, DoD component,

[2] Copies may be obtained, at cost, from DASC-PD, Cameron Station, Alexandria, VA 22304–6130.

or Federal agency if, after consultation with such activity, component, or agency, the intended recipient confirms that it has the requested record. In cases where the DLA activity receiving the request has reason to believe that the existence or nonexistence or the record may in itself be classified, that activity shall consult the DoD component having cognizance over the record in question before referring the request. If the DoD component that is consulted determines that the existence or nonexistence of the record is in itself classified, the requester shall be so notified by the DLA activity originally receiving the request, and no referral shall take place. Otherwise, the request shall be referred to the other DoD component, and the requester shall be notified of any such referral. Any DLA activity receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester.

(2) *Referring records.* (i) Whenever a record or a portion of a record is, after prior consultation, referred to another DLA activity, DoD component, or to a Government agency outside of the DoD for a release determination and direct response, the requester shall be informed of the referral. Referred records shall only be identified to the extent consistent with security requirements.

(ii) A DLA activity shall refer an FOIA request for a classified record that it holds to another DoD component or agency outside the Department of Defense if the record originated in the other DoD component or outside agency or if the classification is derivative. In this situation, provide the record and a release recommendation on the record with the referral action.

(iii) A DLA activity may refer a request for a record that it originated to another DoD component or agency when the record was created for the use of the other DoD component or agency. The DoD component or agency for which the record was created may have an equally valid interest in withholding the record as the DLA activity that created the record. In such situations, provide the record and a release recommendation on the record with the referral action.

(iv) Within DLA, an activity shall ordinarily refer an FOIA request for a record that it holds but that was originated by another activity or that contains substantial information obtained from another activity to that activity for direct response after coordination and obtaining concurrence from the activity. The requester shall then be notified of such referral. DLA activities shall not, in any case, release or deny such records without prior consultation with the other activity.

(3) *On-loan documents.* A DLA activity shall refer to the agency that provided the record any FOIA request for investigative, intelligence, or any other type of records that are on loan to DLA for a specific purpose if the records are restricted from further release and so marked. However if, for investigative or intelligence purposes, the outside agency desires anonymity, a DLA activity may only respond directly to the requester after coordination with the outside agency.

(4) *General Accounting Office (GAO) documents.* On occasion, the DoD receives FOIA requests for GAO documents containing DoD information. Even though the GAO is outside the executive branch and not subject to the FOIA, all FOIA requests from GAO documents containing DoD information received either from the public or on referral from GAO will be processed under the provisions of the FOIA.

(5) *Agencies not subject to the FOIA.* A DLA activity may refer an FOIA request for any record that originated in an agency outside the DoD or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the DLA activity must respond to the request.

(6) *Time to respond.* DLA activities that receive referred requests shall answer them in accordance with the time limits established by the FOIA and this rule. Those time limits shall begin to run upon proper receipt of the referral by the PLFA FOIA manager to respond.

(7) *Accumulating fees.* Requesters receiving the first two hours of search and the first 100 pages of duplication

without charge (see part 286, subpart F, of this title) are entitled to such only once per request. Consequently, if a DLA activity, after completing its portion of a request, finds it necessary to refer the request to another DLA activity or another DoD component to action their portion of the request, the referring activity shall inform the recipient of the expended amount of search time and duplication cost to date.

(k) *Requests for authentication of records.* FOIA requests for authentication of records shall be authenticated with an appropriate seal, whenever necessary, to fulfill an official Government or other legal function according to DLA Regulation 5105.5.[3] This service, however, is in addition to that required under the FOIA and is not included in the FOIA fee schedule. DLA activities may charge for the service at a rate of $5.20 for each authentication.

(l) *Records management.* FOIA records shall be maintained and disposed of in accordance with DLA Manual 5015.1.[4]

(m) *Relationship between the FOIA and the Privacy Act.* Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records. In some instances, they may cite neither Act but will imply one or both Acts. For these reasons, the following guidelines are provided to ensure that requesters receive the greatest amount of access rights under both Acts:

(1) Requesters who seek records about themselves contained in a Privacy Act system of records and who cite or imply the Privacy Act, will have their requests processed under the provisions of the Privacy Act, 5 U.S.C. 552a.

(2) Requesters who seek records about themselves which are not contained in a Privacy Act system of records and who cite or imply the Privacy Act, will have their requests processed under the provisions of the FOIA, since they have no access rights under the Privacy Act.

(3) Requesters who seek records about themselves which are contained in a Privacy Act system of records and who cite or imply the FOIA or both Acts will have their requests processed under the time limits of the FOIA and the exemption and fee provisions of the Privacy Act.

(4) Requesters who seek access to Agency records and who cite or imply the Privacy Act, the FOIA, or both will have their requests processed under the FOIA.

(5) Requesters should be advised in final responses why their request was processed under a particular act.

(n) *Reading rooms.* (1) DLA activities may provide a facility or room where the public may inspect and copy or have copied the so-called "(a)(2)" material (see §1285.3(b) of this part). At those activities where it is impractical to set up a formal reading room, the FOIA manager will arrange for a review of "(a)(2)" material at a suitable time and location. Identifying details that, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from "(a)(2)" materials prior to placement in reading rooms. However, in every case, justification for the deletion must be fully explained in writing. The public's right to inspect first and then decide what is to be copied applies only to "(a)(2)" material. Activities may elect to place other documents in their reading room, including so-called "(a)(1)" material (see §1285.3(a) of this part), as a means to provide public access to such documents and allow the public to first inspect them before copying. When appropriate, the cost of copying may be imposed on the person requesting the material in accordance with §1285.6 of this part and part 286, subpart F, of this title.

(2) "*(a)(2)*" *materials index.* Each activity maintaining a reading room shall maintain an index of the "(a)(2)" materials that are issued, adopted, or promulgated after 4 July 1967. No "(a)(2)" materials issued, promulgated, or adopted after 4 July 1967 that are not indexed and either made available or published may be relied upon or used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Each index shall be arranged topically or by descriptive words rather than by case name or

[3] See Footnote 2 to §1285.2(i)(4).

[4] See Footnote 2 to §1285.2(i)(4).

numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for the convenience of the DLA activity. Such materials issued, promulgated, or adopted before 4 July 1967 need not be indexed but must be made available upon request if not exempted under part 286, subpart C, of this title.

(3) DLA publications and PLFA supplements may, at the discretion of the DLA activity, be regarded as "(a)(2)" material and placed in reading rooms subject to the restrictions in paragraph (o)(2) of this section. Otherwise, requests for publications will be handled according to paragraph (o)(1) of this section.

(o) *Publications of DLA regulations, manuals, handbooks, and uncontrolled forms.* (1) Since most DLA publications are available to the public through the publications distribution sales outlet, the requester may be referred to that outlet.

(2) Requests for DLA publications which are classified, marked "FOR OFFICIAL USE ONLY," or have limited distribution statements will be referred to the issuing activity for release determination and, if appropriate, formal denial. Such publications will not be placed in reading rooms. However, where a public reading room also serves as an activity's library, restricted publications may be maintained provided they are appropriately safeguarded and not commingled with other nonensitive regulations.

(3) For DoD regulations, manuals, directives, handbooks and similar issuances, the FOIA manager may refer the requester to the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161–2171.

(p) *Exemptions.* The types of records described in part 286, subpart C, of this title may be withheld in whole or in part from disclosure under the FOIA unless otherwise prescribed by law.

(q) *Requests for the examination of DLA records.* Only those materials described as "(a)(2)" (and "(a)(1)" at the discretion of the PLFA head) are subject to the examination clause of the FOIA. Such requests will be submitted directly to the appropriate DLA activity listed in appendix A. FOIA managers will inform requesters of the location and time the requested record may be examined. Requesters may be charged for the cost to reproduce copies subject to the guidelines § 1285.6 of this part and part 286, subpart F, of this title.

(r) *Requests for copies of records.* Individuals seeking copies of DLA records should address their FOIA requests to the FOIA manager of the appropriate activity. Addresses and brief descriptions of functions are included in appendix A to this part.

(s) *Requests from private parties.* The provisions of the FOIA are reserved for persons with private interests as opposed to Federal Governments seeking official information. Requests from private persons will be made in writing and will clearly show all other addressees within the Federal Government to whom the request was also sent. This procedure will reduce processing time requirements and ensure better inter- and intra-agency coordination. DLA activities are under no obligation to establish procedures to receive hand delivered requests. Release for records to individuals under the FOIA is considered public release of information, except as provided for in paragraph (g) of this section and § 286.13(a) of this title.

(t) *Requests from government officials.* Requests from Members of Congress for records on behalf for a Congressional Committee, Subcommittee, or either House sitting as a whole will be processed according to DLA Regulation 5400.12.[5] Requests from officials of foreign governments which do not invoke the FOIA shall be referred to HQ DLA-I or the appropriate foreign disclosure channel for processing and the requester so notified. Requests invoking the FOIA from the following government officials will be considered the same as any other requested and processed according to this rule:

(1) Officials of State or local governments.

(2) Members of Congress seeking records on behalf of their constituents.

(3) Officials of foreign governments.

(u) *Privileged release to U.S. Government officials.* (1) Records determined to

[5] See Footnote 2 to § 1285.2(i)(4).

be exempt from public disclosure under one or more of FOIA exemptions may be authenticated and released to U.S. Government officials requesting them on behalf of Federal governmental bodies, whether legislative, executive, administrative, or judicial, as follows:

(i) To a Committee or Subcommittee of Congress or to either House sitting as a whole in accordance with DoD Directive 5400.4.[6]

(ii) To the Federal courts, whenever ordered by officers of the court as necessary for the proper administration of justice. However, receipt of a subpoena *duces tecum* does not automatically compel disclosure of DLA records. To qualify for privileged release under this section, the subpoena must be signed by the judge of a court of competent jurisdiction. A subpoena which has been sent through FOIA channels and signed by a litigating attorney, a subpoena service agent, or an official of a state or local court will be treated as any other FOIA request and subject to the exemptions in part 286 subpart C, of this title. Consult with Counsel before acting on such subpoenas.

(iii) To other Federal Agencies, both executive and administrative, as determined by the DLA Director or designee.

(2) Disclosure under these privileged release circumstances does not set a precedent for disclosure to the general public under the FOIA.

(3) DLA activities shall inform officials receiving records under the provisions of this paragraph that those records are exempt from public release under the FOIA and are privileged. DLA activities will also advise officials of any special handling instructions. See part 286, subpart D, of this title for marking requirements under privileged release circumstances.

§ 1285.3 Definitions.

The following terms and meanings shall be applicable:

(a) "*(a)(1) material*". Material described in 5 U.S.C. 552(a)(1) consisting of descriptions of central and field organizations and, to the extent that they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

(b) "*(a)(2) material*". Material described in 5 U.S.C. 552(a)(2) encompassing:

(1) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used, or relied upon as precedents in future adjudications.

(2) Statements of policy and interpretations that have been adopted by the agency and are not published in the FEDERAL REGISTER.

(3) Administrative staff manuals and instructions, or portions thereof, that establish DLA policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties or to instructions relating only to the internal management of the DLA activities. Examples of manuals and instructions not normally made available include but are not limited to the following:

(i) Those issued for audit, investigation, and inspection purposes or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(ii) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

(c) *Administrative appeal.* A request made under the FOIA by a member of the general public asking the appellate authority to reverse an initial denial authority's decision to withhold all or part of a requested record, to review a "no record found" determination, to reverse a decision to deny a request for waiver or reduction of fees, or to review a category determination for fee assessment purposes.

(d) *Agency record.* (1) The products of data compilation, such as all books, papers, maps and photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United

[6] See Footnote 1 to § 1285.1.

States Government under Federal law in connection with the transaction of public business and in DLA's possession and control at the time the FOIA request is made.

(2) The following are not included within the definition of the word "record":

(i) Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value or value as evidence.

(ii) Administrative tools by which records are created, stored, and retrieved, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of a DLA activity. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium, are not agency records. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software.) Exceptions to this position are outlined in paragraph (d)(3) of this section.

(iii) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(iv) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee and not distributed to other agency employees for their official use.

(v) Information stored within a computer for which there is no existing computer program for retrieval of the requested information.

(3) In some instances, computer software may have to be treated as an agency record and processed under the FOIA. These situations are rare and shall be treated on a case-by-case basis. Examples of when computer software may have to be treated as an agency record are:

(i) When the data is embedded within the software and cannot be extracted without the software. In this situation, both the data and the software must be reviewed for release or denial under the FOIA.

(ii) Where the software itself reveals information about organizations, policies, functions, decisions, or procedures of a DLA activity, such as computer models used to forecast budget outlays, calculate retirement system costs, or optimization models on travel costs.

(iii) See part 286, subpart C, of this title for guidance on release determinations of computer software.

(4) A record must exist and be in the possession and control of DLA at the time of the request to be considered subject to this rule and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

(5) If unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials are available to the public through an established distribution system with or without charge, the provisions of 5 U.S.C. 552(a)(3) normally do not apply, and requests for such need not be processed under the FOIA. Normally, documents disclosed to the public by publication in the FEDERAL REGISTER also require no processing under the FOIA. In such cases, DLA activities should direct the requester to the appropriate source to obtain the record.

(e) *Appellate authority*. The Director, DLA, or his designee, except for fee waivers and category determinations. The appellate authority for such appeals is the Staff Director, Office of Administration, HQ DLA.

(f) *DLA activity*. An element of DLA authorized to receive and act independently on FOIA requests. A DLA activity has its own FOIA manager, initial denial authority, and office of counsel.

(g) *Electronic data*. Those records and information which are created, stored, and retrievable by electronic means. This does not include computer software, which is the tool by which to create, store, or retrieve electronic data. See paragraphs (d)(2)(ii) and (d)(3) of this section for a discussion of computer software.

(h) *FOIA request*. A written request for records made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from the law, that either explicitly or implicitly invokes the FOIA, DoD 5400.7–R, DLAR 5400.14,

this rule, or DLA activity supplementing regulations or instructions.

(i) *Initial denial authority (IDA).* An official who has been granted authority by the Director, DLA, to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure or to issue a "no record" determination. These include the Directors (or equivalent) of HQ DLA Primary Staff Elements (PSE's) and the Commanders (or equivalent) of PLFA's. For fee waiver and requester category determinations, the initial denial authority is the FOIA manager or head of the FOIA unit.

(j) *Public interest disclosures.* Those disclosures which shed light on DLA performance of its statutory duties and thus inform citizens about what their government is doing. The "public interest", however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files that reveals little or nothing about an agency's or official's own conduct. The public interest is one of several factors considered in determining if a fee waiver is appropriate (see part 286, subpart F, of this title).

(k) *Releasing official.* Any individual with sufficient knowledge of a requested record or program to allow him or her to determine if harm would come through release. Releasing officials are at all levels and may be selected to review a particular document because of their expertise in the subject area. The level must be high enough to make sure that releases are made according to the policies outlined here. The authority to release records of a routine nature, such as fact sheets or local directories, may be delegated to any individual at the discretion of the denial authority. In doubtful cases, releasing officials may consult with the FOIA staff or servicing counsel prior to release.

§ 1285.4 Responsibilities.

(a) *The Staff Director, Administration, HQ DLA-X:* (1) Has overall responsibility for establishment and implementation of the DLA FOIA program, providing guidance and instructions to PLFA's and PSE's.

(2) Designates a FOIA manager to administer the DLA FOIA program.

(3) Serves as the point of contact for referring members of the public to the proper DLA source for Agency records.

(4) Serves as appellate authority on fee waivers and category determinations.

(5) Serve as initial denial authority for record denials where more than one PSE is involved or where a PSE has made a determination that the requested record cannot be found.

(6) Submits required reports to the Office of the Assistant Secretary of Defense, Public Affairs.

(7) Collects and deposits fees for FOIA services performed at HQ DLA and DASC.

(b) *The General counsel, HQ DLA-G:* (1) Provides legal advice and assistance to HQ DLA PSE's and, where appropriate, PLFA's in determining decisions to withhold records.

(2) Processes appeals to the Director, DLA, of denials to provide records or "no record" determinations.

(3) Coordinates denial actions with Office of the General Counsel, DoD, and the Department of Justice, as appropriate.

(4) Ensures that case files of FOIA appeals are maintained for 6 years after final agency decision.

(c) *The Staff Director, Office of Public Affairs, HQ DLA-B,* serves as a coordinating office for the release of information to the news media where potential for controversy exists.

(d) *The Staff Director, Office of Congressional Affairs, HQ DLA-Y,* serves as a coordinating office on final responses to FOIA requests from members of the Congress.

(e) *The heads of the DLA principal staff elements (PSE's):* (1) Appoint an individual to serve as FOIA monitor. Letters of appointment will be forwarded to DLA-XAM.

(2) Forward to DLA-XAM any FOIA request received directly from the public so that the request may be administratively controlled.

(3) Ensures that provisions of this regulation are followed in processing requests for records from the public.

(4) Coordinate requests with other HQ DLA staff elements to the extent considered necessary.

(5) Coordinate any proposed denial with the General Counsel.

(6) Serve as initial denial authority.

(7) Ensure that FOIA case files of denials are maintained for 6 years and that full releases are maintained for 2 years.

(8) Make initial determinations to release records or designate individuals to make such determinations.

(f) *The PSE FOIA monitors:* (1) Process and control all FOIA requests received from DLA-XAM.

(2) Make sure established suspenses are met.

(3) Request extensions of time from DLA-XAM when necessary and within the limits of § 1285.5(j) of this part.

(4) Gather cost estimates when requested.

(5) Ensure costs for processing each Freedom of Information Act request are properly recorded.

(6) Coordinate proposed full and partial denials with DLA-XAM prior to signature by the PSE director. Forward a copy of the final response and cost information to DLA-XAM.

(g) *The heads of DLA primary level field activities (PLFA's):* (1) Designate a FOIA manager to administer the DLA FOIA program within the PLFA. Forward the name, address, and telephone number of the manager to DLA-XAM.

(2) Ensure that the provisions of this regulation are followed in processing requests for records from members of the public.

(3) Provide facilities where members of the public may examine and copy the following documents:

(i) DLAH 5805.1[7], DLA Organization Directory.

(ii) DLAH 5025.1[8], DLA Index of Publications.

(iii) DLAM 5015.1, Files Maintenance and Disposition.

(iv) Copies of local directories or indexes.

(v) Any other available "(a)(1)" or "(a)(2)" material.

(4) Sign letters of denial and "no record" determinations after coordination with Counsel.

(5) Refer cases of significance to DLA-XAM for review and evaluation when the issues raised are unusual, precedent setting, or otherwise require special guidance.

(6) Establish safeguards to ensure that FOUO material is protected.

(7) Establish procedures to ensure that a record is maintained of all FOIA requests for logistical data (data on magnetic tape extracted from any of the DLA automated data processing (ADP) systems). The record will contain the requester's name and address, the date of the request, what information was requested, and what information was furnished. This record will be kept for five years.

(8) Inform Public Affairs offices in advance when they intend to withhold or partially withhold a record if it appears that the withholding action may be challenged in the media.

(h) *Freedom of Information Act managers at all levels:* (1) Establish procedures to receive, control, process, and screen FOIA requests. To provide for rapid retrieval of information, FOIA managers will maintain a central log of all incoming FOIA requests.

(2) Review requests to determine if they meet the requirements of 5 U.S.C. 552. Determine category of the requester before assigning the request for search. Provide instructions to the searching office on fees and time limits for response.

(3) Consult with requesters, where necessary, to determine requester category and to resolve fee issues.

(4) Establish training and education program for those personnel who may be involved in responding to FOIA requests.

(5) Approve requests for formal extensions of time and notify requesters in writing of the extension.

(6) Grant or deny requests for fee waivers or requester category determinations and provide DLA-XAM with a copy of each such denial.

(7) Establish procedures to ensure that § 1285.5(1) of this part regarding consultation with submitters of information is complied with.

[7] See Footnote 2 to § 1285.2(i)(4).

[8] See Footnote 2 to § 1285.2(i)(4).

(8) Establish procedures for the collection and deposit of fees for FOIA services.

(9) Ensure that cost data is maintained for each case file.

(10) Establish procedures to ensure that record denials and "no record" determinations are signed by the PLFA initial denial authority and a copy forwarded to DLA-XAM.

(11) Notify DLA-XAM of requesters who have failed to pay fees in a timely manner.

(12) Prepare and submit reports as required.

(13) Consult with public affairs officers (PAO's) to become familiar with subject matter that is considered to be newsworthy and advise PAO's of all requests from news media representatives.

(14) Establish procedures to provide the Congressional Affairs focal point with an information copy of each FOIA request received from a member of the Congress.

(15) Coordinate any proposed supplements or training material with DLA-XAM prior to publication or dissemination.

(16) Establish procedures to ensure that case files of FOIA releases are maintained for two years after cutoff and that denials are maintained for 6 years after cutoff.

(17) Review all proposed full and partial denials prior to signature by the initial denial authority for compliance with these rules.

§ 1285.5 Procedures.

(a) *FOIA channels.* If DLA personnel receive a FOIA request directly from the public that has not been logged in and processed through the FOIA office, they will immediately forward it to the local FOIA manager.

(b) *Central log system.* Each FOIA manager will maintain a central log of FOIA requests received within the activity to ensure compliance with the time limits and accurate cost accounting, fee assessment, and reporting.

(c) *Time limit.* FOIA requests must be responded to within 10 business days after proper receipt, except in unusual circumstances outlined in paragraph (j) of this section. A request is considered properly received on the date the FOIA manager receives it provided the request has been reasonably described and the requester has either agreed to pay assessable fees or has provided sufficient justification for a fee waiver.

(d) *Screening requests.* (1) Before assigning a request for search, the FOIA manager will screen the request for defects in the description, the requester category, and the issue of fees. FOIA managers will notify requesters of any such defects and, wherever possible, offer assistance to help remedy the defects. If the FOIA manager must consult with the requester on any of the following issues, then the request is not considered to be properly received and the 10-day time limit does not begin or resume until the requester has satisfactorily addressed the issue.

(i) *Payments in arrears.* If a requester has failed to pay fees for a previous request, then the FOIA manager need not process the current request until the requester pays the delinquent amount. In such situations, the FOIA manager will notify the requester of the defect and provide an opportunity to forward payment along with any assessable interest. At that time, the FOIA manager may, at his or her discretion, demand that the requester also pay an estimated fee for the current request.

(ii) *Faulty description.* If the request is not reasonably described, the FOIA manager will notify the requester of the defect and advise that a search cannot be initiated without more specific information. In making such determinations, FOIA managers may consult with offices of primary interest to determine the details that are needed to conduct a search. See also paragraph (f)(2) of this section and § 1285.2(i) of this part.

(iii) *Requester category and fees.* The FOIA manager will analyze the request to determine the category of the requester. If the category of the requester is different than that claimed by the requester, the FOIA manager will:

(A) Notify the requester that he or she should provide additional justification to warrant the category claimed and that a search for responsive records will not be initiated until agreement has been attained relative

to the category of the requester. Absent further category justification from the requester and within a reasonable period of time (i.e., 30 calendar days), the FOIA manager shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights.

(B) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the FOIA manager. Requesters must submit a fee declaration appropriate for the following categories:

(*1*) *Commercial*. Requesters must indicate a willingness to pay all search, review, and duplication costs.

(*2*) *Educational or noncommercial scientific institution or news media*. Requesters must indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(*3*) *All others*. Requesters must indicate a willingness to pay assessable search and duplication costs if more than two hours of search effort or 100 pages of records are desired.

(iv) *Justification for fee waivers*. If the requester has asked for a fee waiver but failed to provide a justification, FOIA managers will ask requesters to address the fee waiver criteria in part 286, subpart F, of this title before further processing the request. FOIA managers are reminded that with some types of records, a final decision cannot be made on waiver until after the records have been surfaced, reviewed, and the public benefit and previous public availability assessed.

(2) In cases where there is disagreement on the category of the requester or there is lack of justification for fee waiver, the FOIA manager may process the request without further contacting the requester if he or she believes it can be processed within the automatic $15 waiver limit.

(e) *Providing estimates*. In the situations described by paragraphs (d)(1)(iii) and (d)(1)(iv) of this section, DLA activities must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among DLA activities and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should actual costs exceed the actual amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement.

(f) *Internal processing*. (1) Upon making a determination that the request is reasonably described, that the fee issue has been settled, and that the requester does not owe for a prior request, the FOIA manager will assign the request to the appropriate office of primary interest (OPI) for handling and provide instructions on the category of the requester, the fees to be charged or waived, and what actions the OPI is to take.

(2) After reviewing a request, the OPI may determine, based on knowledge of the files and programs, that a request is, in fact, not reasonably described. OPI's will notify FOIA managers of such defects immediately so that further details may be sought from the requester. Any delays on the requester's part in receiving more detailed information will not count toward the 10-day time limit.

(g) *Initial determinations*—(1) *Reasons for not releasing a record*. There are seven reasons for not complying with a request for a record:

(i) The request is transferred to another DLA activity, DOD component, or to another Federal agency.

(ii) The DLA activity determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record. Responding officials will advise requesters of the right to appeal such determinations. See paragraph (i)(5) of this section for details on processing "no record" responses.

(iii) A record has not been described with sufficient particularity to enable the DLA activity to locate it by conducting a reasonable search.

(iv) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this rule.

(v) The request is withdrawn by the requester.

(vi) The information requested is not a record within the meaning of the FOIA and this rule.

(vii) The record is denied in accordance with procedures set forth in the FOIA and this rule.

(2) *Reasonably segregable portions.* Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not reasonable to segregate portions of the record for release.

(h) *Preparing documents for public release*—(1) *Material containing For Official Use Only marks.* When a determination has been made that a FOUO document may be fully released to a requester under any public information program, the FOUO markings will be removed from the requester's copy prior to release. In cases where a person seeks access to his or her own record and the record is marked FOUO to protect that person's personal or proprietary interests, the FOUO marks will be deleted from the requester's copy prior to release, even though the FOUO status has not been terminated. In such cases, the official file copy will retain the FOUO warning. If only portions of a document marked as FOUO are to be released to the public under the FOIA, then the exempt portions will be taped out, blackened out, whited out, or cut out and a copy reproduced for the requester from the marked up copy. Initial denial authorities will ensure that the deleted portion cannot be read and that the FOUO marks have been lined through prior to release.

(2) *Material containing classification markings.* The procedures in paragraph (h)(1) of this section apply to classified documents with the exception that the classified portions will be cut out rather than blackened, taped, or whited out. The classification markings on the requester's copy will be deleted prior to release.

(i) *Response to requester*—(1) *Time limits.* Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 working days after receipt of the request by the FOIA manager. When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with procedural requirements.

(2) *Acknowledging date of receipt.* When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

(3) *Billing.* When fees are being levied, the response to the requester will contain a billing paragraph. Responding officials will advise requesters to make checks or money orders payable to the United States Treasury and forward them to the FOIA manager of the PLFA that incurred the expense. FOIA managers will notify DLA-XAM of names and addresses of requesters who have failed to pay after a second billing has been mailed and 30 days have elapsed without payment.

(4) *Full and partial denials.* (i) When a request for a record is denied in whole or in part on the basis of one or more of the exemptions in part 286, subpart C, of this title the initial denial authority shall inform the requester in writing and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemption(s) on which the denial is based. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable Executive Order criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to the Director, DLA.

(ii) FOIA managers shall forward a copy of each letter of denial to DLA-XAM, Cameron Station, Alexandria,

Virginia 22304–6100. Do not include attachments, the incoming request, or any backup material.

(5) *Providing "no record" responses.* (i) If no documents can be located in response to a FOIA request, the initial denial authority will so advise the requester. Requesters will also be advised that, if they consider the response to be adverse, they may file an appeal within 60 calendar days from the date of the response. Requesters are to be advised to address appeals to the local FOIA manager and include the case number and reasons why they believe the DLA activity should have records on the subject matter.

(ii) Before a formal "no record" response is issued, OPI will verify that the requester has adequately described the record. If additional details will aid the search, then the requester will be asked to provide those details. See paragraph (d)(1)(ii) of this section and § 1285.2(i) of this part for procedures for resolving inadequate descriptions.

(iii) In cases where the requested record has been destroyed, the initial denial authority will confirm that the record was retained for the period authorized in DLAM 5015.1 before issuing a formal response. In responding to requesters in these cases, advise the requester that the records were properly destroyed according to Agency rules for record disposition and give the right to appeal as outlined in paragraph (i)(5)(i) of this section. However, do not ask the requester to provide reasons why the activity should have the records.

(iv) Upon receipt of an appeal, the FOIA manager will direct that a second search be conducted using any information supplied by the requester. If the second search produces no documents, the appeal will be forwarded to HQ DLA-G, Cameron Station, Alexandria, Virginia 22304–6100, along with a copy of the case file. The FOIA manager will include the cost information and an explanation of the method of search and the types of offices searched. In cases where the "no record" response was issued because the records have been destroyed, the FOIA manager will verify that the records were destroyed as provided for in DLAM 5015.1 and provide a statement to that effect.

(v) FOIA managers will ensure that a copy of each "no record" response letter is forwarded to DLA-XAM, Cameron Station, Alexandria, Virginia 22304–6100. Do not include attachments, the incoming request, or any backup material.

(6) *Coordination.* OPI's will ensure that the proposed response is fully coordinated with offices having an interest in the request. Proposed responses to FOIA requests from members of the Congress will be coordinated with DLA-Y or the local Congressional Affairs focal point.

(j) *Extensions of time*—(1) *Formal extensions.* In unusual circumstances, when additional time is needed to respond, the FOIA manager will acknowledge the request in writing within the 10-day period, describe the circumstances requiring the delay, and indicate the anticipated date for substantive response that may not exceed 10 additional working days. Such extensions will be approved on a case-by-case basis. In these unusual cases where the statutory time limits cannot be met and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester with a request that he agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made. Since the requester still retains the right to treat this delay as a defacto denial with full administrative remedies, such extensions should be issued only when essential. The unusual circumstances that may be cited to justify delay are:

(i) *Location.* The requested record is located in whole or in part at places other than the office processing the request.

(ii) *Volume.* The request requires the collection and evaluation of a substantial number of records.

(iii) *Consultation.* Consulation is required with other DoD components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part

under provisions of this rule or should be released as a matter of discretion.

(2) *Informal extensions.* Where practical and expedient, the FOIA manager or official designated to respond may negotiate with the requester and arrange for an informal extension. Such extensions may be appropriate in instances where the records have to be ordered from a record repository; where the record has been sent out for commercial printing and is not expected back before the 10-day time has elapsed; and similar circumstances.

(k) *Misdirected requests.* Misdirected requests shall be forwarded promptly to the FOIA manager of the DLA activity, DoD component, or Federal agency with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the FOIA manager of the PLFA that controls the records requested.

(l) *Records of contractors and other non-U.S. government sources.* (1) Executive Order 12600 of 23 June 1987 (52 FR 23781) establishes predisclosure notification procedures for confidential commercial information. When a request is received for a record that was obtained from a contractor or other non-U.S. Government source or for a record containing information clearly identified as having been provided by a contractor or other non-U.S. Government source, the source of the record or information (also known as "the submitter" for matters pertaining to proprietary data under 5 U.S.C. 552(b)(4)) (see § 286.13(a)(4) of this title) shall be notified promptly of that request and afforded reasonable time (e.g., 30 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. The following procedures will be followed:

(i) The person designated to respond will provide the source with a copy of the incoming request, a copy of the documents responsive to the request, and a letter of instruction. The notification letter will be addressed to the president of the entity or the entity's counsel and sent by return receipt mail.

(ii) When a substantial issue has been raised, the DLA activity may seek additional information from the source and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved.

(iii) Any objections to release will be evaluated and the source provided with a copy of the activity's final decision. Where a decision is made to release information claimed to be exempt, the source will be notified that the information will be released on a specified date unless the source seeks a restraining order or takes court action to prevent disclosure. Evaluators are cautioned that any decision to disclose information claimed to be exempt under 5 U.S.C. 552(b)(4) must be made by an official equivalent in rank to the initial denial authority.

(iv) When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the FOIA manager will notify the requester and suspend action on the request until after the outcome of that court action is known. When the requester brings court action to compel disclosure, the FOIA manager shall promptly notify the submitter of this action.

(2) These procedures are required for those FOIA requests for data not deemed clearly exempt from disclosure under exemption (b)(4). If, for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and established that it would be made available to the public upon request, there is no obligation to notify the source.

(3) These coordination provisions also apply to any non-U.S. Government record in the possession and control of DLA from multi-national organizations, such as North Atlantic Treaty Organization (NATO) and North American Aerospace Defense Command (NORAD), or foreign governments. Coordination with foreign governments under the provisions of this paragraph shall be made through the Department of State.

(m) *File of initial denials.* Copies of all initial denials shall be maintained by each DLA activity in a form suitable

for rapid retrieval, periodic statistical compilation, and management evaluation.

(n) *Appeals*—(1) *General*—(i) *Appeals to record denials*. Requesters denied access to records under the provisions of part 286, subpart C, of this title may appeal such determinations to the Director, DLA. The appeal should be accompanied by a copy of the letter denying the initial request and contain the basis for disagreement with the initial refusal.

(ii) *Appeals to a "no record" finding*. Requesters have the right to appeal any "no record" finding to the FOIA manager of the activity that issued the finding. The letter of appeal should include the case number and, where appropriate, reasons why the requester believes the activity should have records on the subject matter. Using the information supplied by the requester, the FOIA manager will direct that a second search be conducted. If the second search produces no documents, the appeal will be forwarded to HQ DLA-G, Cameron Station, Alexandria, Virginia 22304–6100, along with a copy of the case file. The FOIA manager will include information on the amount of time spent on the request and provide an explanation of the method of search and the types of offices searched.

(iii) *Appeals to fee waiver denials or requester category decisions*. Requesters may appeal an initial determination regarding placement in a certain fee assessment category or waiver or reduction of fees when disclosure serves the public interest. Requesters will include a basis for disagreement and submit the appeal to the Staff Director, Office of Administration (Attn: DLA-XAM), Cameron Station, Alexandria, Virginia 22304–6100.

(2) *Time limits*—(i) *Time limits to file appeals*. The requester shall be advised to file an appeal so that it reaches the appellate authority no later than 60 calendar days after the date of the initial denial letter. At the conclusion of this period, the case may be considered closed; however, such closure does not preclude the requester from filing litigation. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification.

(ii) *Time of receipt*. An FOIA appeal is considered received by DLA when it reaches DLA-G or, in the case of fee or requester category appeals, when it reaches DLA-XAM. Misdirected appeals should be referred expeditiously to the appropriate office.

(iii) *Time limits to decide appeals*. Final determinations on appeals normally shall be made within 20 working days after receipt.

(iv) *Delay in responding to an appeal*. (A) If additional time is needed due to the unusual circumstances described in paragraph (j) of this section, the final decision may be delayed for the number of working days (not to exceed 10), that were not used as additional time for responding to the initial request.

(B) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in paragraph (j) of this section, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. DLA shall continue to process the case expeditiously, whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing of a complaint shall be forwarded to the Department of Justice.

(C) When the appellate authority or the authority's representative must consult with the requester over an issue not previously settled, such as agreement to pay fees for documents previously denied, then any delays on the requester's part will not count toward the 20-day time limit.

(3) *Response to the requester*. (i) When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of

the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(ii) Final refusal to provide a requested record must be made in writing by the DLA Director or his designee. In the case of fee appeals, final refusal to waive or reduce fees must be made in writing by the Staff Director of Administration. Record denial responses, at a minimum, shall conform to the following:

(A) The basis for the refusal shall be explained to the requester with regard to the applicable statutory exemption or exemptions invoked.

(B) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(C) The response shall advise the requester that the material being denied does not contain meaningful portions that are reasonably segregable.

(D) The response shall advise the requester of the right to judicial review.

(4) *Consultaton.* (i) Final refusal involving issues not previously resolved or that are known to be inconsistent with rulings of other DoD components ordinarily should not be made without first consulting with the Office of the General Counsel of the Department of Defense.

(ii) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the Government shall be provided to the Department of Justice, Attn: Office of Legal Policy, Office of Information and Policy, Washington, DC 20530.

(5) *Records management.* Case files of appeals shall be retained by DLA-G or, in the case of fee or requester category appeals, by DLA-XAM for a period of six years to meet the statute of limitations of claims requirement.

(o) *Special mail services.* DLA activities are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

(p) *Receipt accounts.* The Treasurer of the United States has established Receipt Account 3210 for use in depositing search, review, and duplication fees collected under the FOIA. Upon receipt of payment, the FOIA manager will forward the check or money order to DFAS/CO/PDG, P.O. Box 182317, Columbus, Ohio 43218–2317. FOIA managers will advise DFAS that the check is to be deposited to accounting classification 21R3210.0004. This account will not, however, be used for depositing receipts for technical information released under the FOIA, industrially-funded activities, and non-appropriated funded activities. Instead, payments for these shall be deposited to the appropriate fund.

§ 1285.6 Fees and fee waivers.

The rules and rates published in part 286, subpart F of this title apply to this rule. For purposes of computer search, DLA has established rates of $20 per minute of central processing unit time for mainframe computer use and $20 per hour of wall clock time for personal computer use. These rates represent average operational costs and may be used when the actual computer cost cannot be determined.

§ 1285.7 Reports.

The reporting requirement outlined in this rule is assigned Report Control Symbol DD-PA(A)1365 and will be prepared according to part 286, subpart G, of this title.

APPENDIX A TO PART 1285—GAINING ACCESS TO DLA RECORDS

I. General

The Defense Logistics Agency was established pursuant to authority vested in the Secretary of Defense and is an agency of DoD under the direction, authority, and control of the Assistant Secretary of Defense (Production and Logistics) and is subject to DoD policies, directives, and instructions. DLA is made up of a headquarters and 22 Primary Level Field Activities (PLFA's). DLA does not have a central repository for its records.

FOIA requests, therefore, should be addressed to the FOIA Office of the DLA activity that has custody of the record desired. In answering inquiries regarding FOIA requests, DLA personnel will assist requesters in determining the correct DLA activity to address their requests. If there is uncertainty as to the ownership of the DLA record desired, the requester may be referred to the FOIA manager of the DLA activity most likely to have the record or to HQ DLA-XAM.

II. Description of DLA's Central and Field Organization

A. HQ Defense Logistics Agency, Cameron Station, Alexandria, Virginia 22304–6100

The headquarters is organized by broad functional area and includes the following offices and directorates:

Office of the Director.
Executive Director, Contracting.
Executive Director, Supply Operations.
Executive Director, Technical and Logistics Services.
Executive Director, Contract Administration.
Executive Director, Quality Assurance.
Executive Director, Program and Technical Support.
Staff Director, Congressional Affairs.
Staff Director, Public Affairs.
Staff Director, Command Security.
Staff Director, Administration.
Staff Director, Civilian Personnel.
Staff Director, Contracting Integrity.
Staff Director, Military Personnel.
Staff Director, Small and Disadvantaged Business Utilization.
Staff Director, Installation Services and Environmental Protection.
Assistant Director, Information Systems and Technology.
Assistant Director, Policy and Plans.
General Counsel.
Comptroller.

B. The PLFA's.

The 22 PLFA's are organized into six supply centers, four depots, six service centers, and six contract districts.

1. *Supply centers*. The six supply centers are responsible for materiel management of assigned commodities and items of supply relating to food, clothing, textiles, medical, chemical, petroleum, industrial, construction, electronics, and general items of supply. The six supply centers are:

a. Defense Construction Supply Center (DCSC). Buys and manages construction materials, automotive, and construction equipment components, and many repair parts used by the Military Services and other Federal agencies. Manages items ranging from common commercial items such as lumber and plumbing accessories to complex repair parts for mechanical, construction, and automotive equipment, and for military aircraft, surface ships, submarines, combat vehicles, and missile systems.

b. Defense Electronics Supply Center (DESC). Responsible for the acquisition, management, and supply of more than one-half million electronic components such as resistors, capacitors, tubes, transformers, microcircuits, and components for various communications and weapons systems.

c. Defense Fuel Supply Center (DFSC). Serves as material manager for bulk petroleum and coal and is responsible for its worldwide supply, storage, and distribution.

d. Defense Industrial Supply Center (DISC). Buys and manages industrial items such as bearings, ferrous and nonferrous metals, electrical wire, gasket material, and certain mineral ores and precious metals.

e. Defense Personnel Support Center (DPSC). Buys and manages food, clothing, and medical supplies for all the armed services, some Federal agencies and authorized foreign governments.

f. Defense General Supply Center (DGSC). Buys and manages such categories of materials as electrical hardware, materials handling equipment, kitchen and laundry equipment, woodworking and metalworking machines, photographic supplies, and precision measuring instruments.

2. *Depots*. DLA depots are responsible for the receipt, storage, and distribution of DLA-managed materiel. The principal depots are:

Defense Distribution Region West (DDRW)
Defense Distribution Region East (DDRE)
Defense Depot Memphis (DDMT)
Defense Depot Ogden (DDOU)

3. *Service centers*. DLA operates six service centers which provide technical and logistics services. The service centers are:

a. Defense Logistics Services Center (DLSC). Responsible for maintenance of the Federal Supply Catalog System, including the development and dissemination of cataloging and item intelligence data to the Military Departments and other authorized customers.

b. Defense Reutilization and Marketing Service (DRMS). The central clearinghouse for the reutilization, donation, sale, or disposal of DoD-owned excess property, including scrap and waste.

c. Defense Industrial Plant Equipment Center (DIPEC). Manages the reserve of DoD-owned industrial plant equipment. The center repairs, rebuilds, and updates equipment to avoid new procurement costs.

d. DLA Administrative Support Center (DASC). Provides general administrative support to designated DLA activities.

e. Defense National Stockpile Center (DNSC). Maintains the national reserve of

strategic materials stored for use in event of war or other national emergency.

f. DLA Systems Automation Center (DSAC). Develops and maintains DLA's automated and computerized systems.

4. *Contract districts.* Six districts, each responsible for contracts covering a multistate or specialized area, administer materiel contracts after they are awarded by the military services, defense agencies, some civil agencies, and certain foreign governments. The districts are:

Defense Contract Management District Northeast (DCMDN).

Defense Contract Management District Mid Atlantic (DCMDM).

Defense Contract Management District North Central (DCMDC).

Defense Contract Management District South (DCMDS).

Defense Contract Management District West (DCMDW).

Defense Contract Management Command International (DCMCI).

III. Requester Requirements

A. Addressing Requests

Address requests to the DLA PLFA most likely to hold the records (see paragraph V of this appendix for mailing addresses of FOIA managers). If the PLFA is undeterminable, address requests to HQ DLA-XAM for proper routing. Requests must be in writing.

B. Description of Records.

Provide a reasonable description of the documents you are seeking. If you have detailed information which would help reduce the search time involved, please include it in your request. If you have a document which references the DLA record you seek, include a copy of that document.

C. Fees and fee waivers.

State your willingness to pay fees above the $15 automatic waiver or provide a justification for waiver of all or part of the costs. Waiver requests must address with specificity each of the fee waiver elements in part 286, subpart F, of this title.

IV. Availability of DLA Publications

Unrestricted DLA regulations, manuals, and handbooks may be purchased from the DLA publications sales outlet. DLA Handbook 5025.1, Defense Logistics Agency Index of Publications, is published quarterly and may be used to help you identify publications of interest to you. Orders for this and other nonrestricted publications may be placed through DASC-PD, Cameron Station, Alexandria, VA 22304–6130. That office will advise you of cost before completing your order.

V. FOIA Mailing Addresses

HQ Defense Logistics Agency, Attn: HQ DLA-XAM, Cameron Station, Alexandria, VA 22304–6100.

Defense Construction Supply Center, Attn: DCSC-WXA, 3990 E. Broad Street, Columbus, OH 43216–5000.

Defense Electronics Supply Center, Attn: DESC-WXA, 1507 Wilmington Pike, Dayton, OH 45444–5252.

Defense Fuel Supply Center, Attn: DFSC-DB, Cameron Station, Alexandria, VA 22304–6160.

Defense General Supply Center, Attn: DGSC-DB, Richmond, VA 23297–5000.

Defense Industrial Supply Center, Attn: DISC-PPR, 700 Robbins Avenue, Philadelphia, PA 19111–5096.

Defense Personnel Support Center, Attn: DPSC-WXA, 2800 South 20th Street, Philadelphia, PA 19101–8419.

Defense Distribution Region East, Attn: DDRE-WX, New Cumberland, PA 17070–5001.

Defense Depot Memphis, Attn: DDMT-WX, 2163 Airways Blvd., Memphis, TN 38114–5000.

Defense Depot Ogden, Attn: DDOU-G, 800 West 12th Street, Ogden, UT 84407–5000.

Defense Distribution Region West, Attn: DDRW-WX, Tracy, California 95376–5000.

Defense National Stockpile Center Attn: DNSC-L, 1745 Jefferson Davis Highway, Crystal Square No. 4, suite 100, Arlington, VA 22202–3402.

Defense Industrial Plant Equipment Center, Attn: DIPEC-LP, 2163 Airways Blvd., Memphis, TN 38114–5051.

Defense Logistics Services Center, Attn: DLSC-WXA, 74 N. Washington Avenue, Battle Creek, MI 49017–3084.

Defense Reutilization and Marketing Service, c/o Defense Logistics Services Center, Attn: CLSC-WXA, 74 N. Washington Avenue, Battle Creek, MI 49017–3084.

DLA Systems Automation Center, Attn: DSAC-E, P.O. Box 1605, Columbus, OH 43216–5002.

DLA Administrative Support Center, Attn: DASC-RA, Cameron Station, Alexandria, VA 22304–6130.

Defense Contract Management District South, Attn: DCMDS-W, 805 Walker Street, Marietta, Georgia 30060–2789.

Defense Contract Management District Northeast, Attn: DCMDN-WX, 495 Summer Street, Boston, MA 02210–2184.

Defense Contract Management District North Central, Attn: DCMDC-WX, O'Hare International Airport, P.O. Box 66926, Chicago, Il 60666–0926.

Defense Contract Management District West, Attn: DCMDW-WXA, 222 N. Sepulveda Blvd., El Segundo, CA 90245–4320.

Defense Contract Management District Mid Atlantic, Attn: DCMDM-RW, 2800 S. 20th Street, Philadelphia, PA 19101–7478.

Defense Contract Management Command International, Attn: DCMCI-MBW, Wright-Patterson AFB, OH 45433–5000.

PART 1288—REGISTRATION OF PRIVATELY OWNED MOTOR VEHICLES

Sec.
1288.1 Purpose and scope.
1288.2 Policy.
1288.3 Definitions.
1288.4 Responsibilities.
1288.5 Procedures.
1288.6 Forms and reports.
APPENDIX A TO PART 1288—DECAL SPECIFICATIONS

AUTHORITY: 5 U.S.C. 301; DOD Directive 5105.22, June 8, 1978.

SOURCE: 43 FR 40806, Sept. 13, 1978, unless otherwise noted.

§ 1288.1 Purpose and scope.

To prescribe policy and procedures for the registration, inspection, and marking of privately owned vehicles (POV) on Defense Logistics Agency (DLA) activities. This regulation is applicable to individuals serving in or employed by the Defense Logistics Agency, and to all other individuals subject to motor vehicle registration requirements set forth in this part 1288 and DLAR 5720.1/AR 190–5/OPNAVINST 11200.5B/AFR 125–14/MCO 5110.1B, Military Police Motor Vehicle Traffic Supervision.

§ 1288.2 Policy.

(a) The operation of a POV on a DLA activity constitutes a conditional privilege extended by the Head of the activity. The Heads of DLA primary level field activities (PLFA's) have the authority to supplement this regulation to implement additional controls and restraints warranted by existing conditions at a PLFA. For example, commanders of depots and supply centers may impose searches of vehicles as warranted to reduce pilferage, and protect Government interests.

(b) POV's permanently registered for operation on a DLA activity will be identified by use of one of the decals prescribed in this part 1288 (appendices A and B).

(c) The DLA vehicle decal will be valid for a period of 3 years from the year and month of issue.

(d) Activities will use DLA Form 1454, Vehicle Registration/Driver Record, as the basic vehicle registration and driver record.

(e) DLA tenant activities will comply with host installation policies and procedures for registering POV's.

§ 1288.3 Definitions.

Terms used in this part 1288 are contained in DLAR 5720.1.

§ 1288.4 Responsibilities.

(a) *HQ DLA*. (1) The command security officer, DLA (DLA-T) will provide staff supervision and assistance to DLA activities on matters concerning this part 1288.

(2) The inspector general, DLA (DLA-I) will procure, issue, and control inspector general (IG) vehicle decals in accordance with § 1288.6 of this part, with the exception of the 3-year validation requirement. (Vehicles bearing such decals will be permitted entry to all DLA activities.)

(b) The heads of DLA primary level field activities will:

(1) Insure that personnel adhere to the provisions of this part 1288 when implemented.

(2) Procure, issue, and control vehicle decals in accordance with this DLAR.

(3) Periodically inform personnel of the requirements of this DLAR, DLAR 5720.1, and local requirements concerning the motor vehicle registration program.

(4) Activity/tenant employees are not considered visitors and will not be issued visitor passes. Employees operating loaner/rental vehicles may be temporarily registered in accordance with DLAR 5720.1, paragraph 3–2c.

§ 1288.5 Procedures.

(a) *Issuance of DLA POV decal and 3-year validation sticker*. (1) One decal will be affixed to the left front bumper (operator's side) of a four-wheel vehicle. An additional decal may be placed on the rear bumper of the vehicle. For vehicles not equipped with bumpers and two-wheeled vehicles, the placement of decals will be determined locally.

(2) A 3-year validation sticker indicating the decal expiration will be issued at the same time the DLA decal is issued. Every 3 years, or following a significant change, registrants will be required to update their registration information. Evidence of compliance will be documented by the issuance and display of a new 3-year validation sticker.

(3) The validation sticker will be placed next to the DLA decal affixed to the front bumper of the vehicle. This sticker will reflect the month and year of the decal expiration, e.g., vehicles registered during the month of June 1978 will have affixed a validation sticker with the numbers "6–81", indicating expiration of the decal at the end of June 1981. The specifications for the validation sticker will be determined locally.

(4) Decals or other media used to identify vehicles of temporary registrants or visitors will be locally prescribed.

(5) Decals will be removed from POV's by the registrant when activity registration is terminated. See DLAR 5720.1, chapter 3, for information on termination of registration.

(6) Vehicle decals will be purchased with appropriated funds for issuance at no cost to authorized users.

(b) *Proof of insurance.* (1) Individuals registering vehicles will certify possession of insurance per DLAR 5720.1, paragraph 3–3c.

(2) The certification contained on DLA form 1454 will, as indicated thereon, be witnessed and manifested by a signature.

(c) *Vehicle inspection.* (1) DLA activities located in States or jurisdictions having mandatory vehicle safety inspections will reflect the provisions of DLAR 5720.1, paragraph 3–3d, in the supplementation of this DLAR.

(2) Vehicle safety inspections are not mandatory for DLA activities located in areas not requiring such inspections.

(d) *Registrant.* Registrant must inform the vehicle registration office within 72 hours as information on DLA form 1454 becomes invalid.

§ 1288.6 Forms and reports.

(a) DLA form 1454 will be prepared at the time of initial registration of the vehicle and will remain valid for as long as the registrant retains ownership of the vehicle and complies with registration requirements. A Privacy Act statement for use in conjunction with DLA form 1454 will be made available to the individual supplying data on the form.

(b) Data blocks 3, 4, and 14 on DLA form 1454 will be entered in ink; remaining entries will be in pencil.

(c) One copy of DLA form 1454 will also serve as the driver record of the registrant.

(d) Upon permanent change of station of the military service registrant, activity clearance procedures will provide for DLA form 1454 to be included in the registrant's military personnel folder for transmittal to the gaining activity. DLA forms 1454 for transferring civilian personnel will be forwarded to the security officer of the gaining activity.

(e) The DLA form 1454 for military personnel being discharged or separated will be forwarded to the appropriate personnel office for inclusion in the records folder for subsequent retirement.

APPENDIX A TO PART 1288—DECAL SPECIFICATIONS

A. The design format of the standard DLA decal to be used for identifying POV's permanently registered for operation on DLA activities is shown in enclosure 2. The IG decal will be of the same design and color as that prescribed for the standard DLA decal except that the registration letter/number scheme will consist of the letters "IG" followed by a number. Standard DLA decals may be procured from the U.S. Disciplinary Barracks, USDB, Fort Leavenworth, Kans. 66027, which is an approved Federal printing plant. Existing stocks of decals with "DSA" inscribed will be used until exhausted.

B. The following specifications apply to the separate elements of the decal:

1. *Basic construction.* Decal will meet Federal Specification L-5300A, 7 Jan 70, type I, class 4, reflectivity 1.

2. *Colors:*

a. Background—Silver.

b. DLA emblem, field activity name, and scroll, the letters DLA, and year/date—Black.

C. Registration letters/numbers:

(1) Mandatory categories:

(a) Officer personnel—Blue.

(b) Enlisted personnel—Red.

(c) Civilian employees—Green.

(2) The following additional colors will be used to categorize registration further:

(a) Noncommissioned officer personnel—Brown.

(b) Civilian employees (nonappropriated fund), Red Cross, concessionaires, contractors, and other similar categories—Black.

3. *Registration letters/numbers.* For each registration category a combination of letters and number(s) separated by the DLA emblem will be used. The number-letter system will progress from AA-1 to AA-2, and so on, to AA-99, from AB-1 to AB-99, eventually from AZ-1 to AZ-99, and so on from ZZ-1 to ZZ-99.

4. *Dimensions:*

a. Maximum size: 3 inches by 6 inches. For economy a reduced size decal may be used on POV's to include those with less than four wheels.

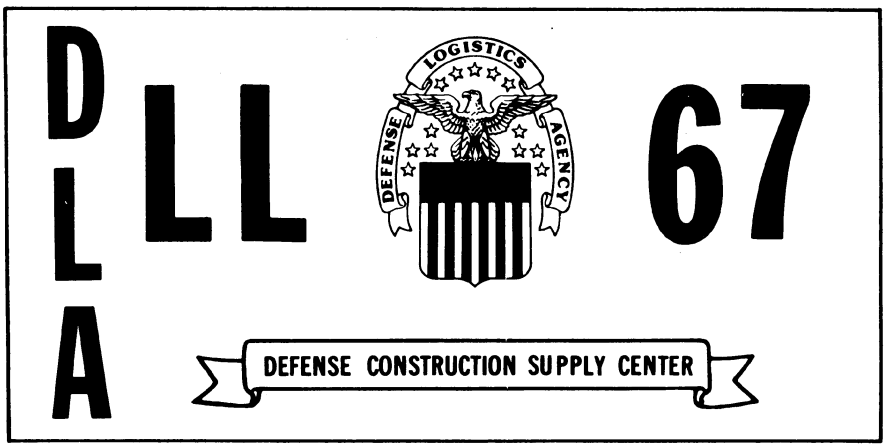
b. Registration letters and numerals: 1¼ to 1½ inches in height.

c. DLA emblem letters: 1½ inches to 1¾ inches in height.

d. DLA letters: ½ inch to ¾ inch in height.

e. Activity designation scroll and lettering: See appendix B.

STANDARD DLA PRIVATE VEHICLE IDENTIFICATION DEVICE



PART 1290—PREPARING AND PROCESSING MINOR OFFENSES AND VIOLATION NOTICES REFERRED TO U.S. DISTRICT COURTS

Sec.
1290.1 References.[1]
1290.2 Purpose and scope.
1290.3 Policy.
1290.4 Definitions.
1290.5 Background.
1290.6 Significant changes.
1290.7 Responsibilities.
1290.8 Procedures.
1290.9 Forms and reports.

APPENDIX A TO PART 1290—PREPARATION GUIDE FOR DD FORM 1805, VIOLATION NOTICE

APPENDIX B TO PART 1290—TICKET SAMPLE—A PARKING VIOLATION

APPENDIX C TO PART 1290—TICKET SAMPLE—A MOVING VIOLATION

APPENDIX D TO PART 1290—TICKET SAMPLE—A NONTRAFFIC VIOLATION

AUTHORITY: Department of Defense Instruction 6055.4; 18 U.S.C. 13, 3401, and 3402.

[1] Reference (a) may be purchased from the Commander, U.S. Army AG Publications Center, 2800 Eastern Blvd., Baltimore, MD 21220; reference (b) from the Defense Logistics Agency (DASC-IP), Cameron Station, Alexandria, VA 22314; references (c), (d), and (e) from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

SOURCE: 44 FR 55859, Sept. 28, 1979, unless otherwise noted.

§ 1290.1 References.

(a) DLAR 5720.1/AR 190–5/OPNAVINST 11200.5B/AFR 125–14/MCO 5110.1B, Motor Vehicle Traffic Supervision.

(b) DLAR 5710.1, Authority of Military Commanders To Issue Security Orders and Regulations for the Protection of Property or Places Under Their Command.

(c) Sections 1, 3401 and 3402, title 18, U.S.C.

(d) Rules of procedures for the Trial of Minor Offenses before United States Magistrates.

(e) Section 13, title 18, U.S.C., Assimilative Crimes Act.

§ 1290.2 Purpose and scope.

(a) This part 1290 implements DoD Instruction 6055.4, Department of Defense Traffic Safety Program, and sets forth basic objectives and procedures applicable to implementation of the Federal Magistrate System by DLA. This part 1290 is applicable to HQ DLA, Defense Supply Centers (DSC's), less Defense Fuel Supply Center and Defense Industrial Supply Center, and to Defense Depots, less Defense Depot Mechanicsburg. DLA activities/personnel tenant on other DoD activities will abide by the requirements of the host.

(b) This part 1290 provides Heads of DLA primary level field activities (PLFAs) with a means of exercising effective control over violators who are not otherwise under their jurisdiction.

§ 1290.3 Policy.

(a) It is the policy of HQ DLA that the Heads of DLA PLFAs will take such steps as are necessary to prevent offenses. Emphasis will be placed on prevention rather than apprehension and prosecution of offenders.

(b) The procedures outlined in this part 1290 may, at the discretion of the Head of the activity concerned, be invoked in lieu of the provisions of the Uniform Code of Military Justice (UCMJ) to deal with minor offenses of a civil nature, other than violations of state traffic laws, committed by military personnel. These procedures may also be invoked to deal with nontraffic minor offenses committed by civilian personnel.

§ 1290.4 Definitions.

For the purpose of this part 1290 the following definitions apply:

This part 1290 supersedes part 1290 April 26, 1972.

(a) *Law Enforcement Personnel*. Persons authorized by the Head of the PLFA to direct, regulate, control traffic; to make apprehensions or arrests for violations of traffic regulations; or to issue citations or tickets. Personnel so designated will include the Command Security Officer and all other personnel in 080, 083, 085, or 1800 series positions.

(b) *Minor Federal Offenses*. Those offenses for which the authorized penalty does not exceed imprisonment for a period of 1 year, or a fine of not more than $1000, or both (18 U.S.C. 3401f).

(c) *Petty Federal Offenses*. Those offenses for which the authorized penalty does not exceed imprisonment for a period of 6 months or a fine of not more than $500, or both (18 U.S.C. 1(3)).

NOTE: A petty offense is a type of minor offense.

(d) *Violation Notice*. DD Form 1805, Violation Notice, which will be used to refer all petty offenses to the U.S. Magistrate/District Courts for disposition.

NOTE: A complaint, made under oath on forms provided by the magistrate, is the prescribed form for charging minor offenses other than petty offenses.

§ 1290.5 Background.

(a) DoD Instruction 6055.4 requires that all traffic violations occurring on DoD installations be referred to the appropriate United States Magistrate, or State or local system magistrate, in the interest of impartial judicial determination and effective law enforcement. Exceptions will be made only for those rare violations in which military discipline is the paramount consideration, or where the Federal court system having jurisdiction has notified the PLFA commander it will not accept certain offenses for disposition.

(b) Generally, the Federal Magistrate System applies state traffic laws and

appropriate Federal laws to all personnel while on Federal property (section 13, title 18 U.S.C., Assimilative Crimes Act).

§ 1290.6 Significant changes.

This revision incorporates the DoD requirement for referral of traffic violations occurring on military installations to the Federal or local magistrate.

§ 1290.7 Responsibilities.

(a) *HQ DLA*. (1) *The Command Security Officer, DLA (DLA-T)* will:

(i) Exercise staff supervision over the Magistrate system within DLA.

(ii) Provide guidance and assistance to DLA activities concerning administrative and procedural aspects of this part 1290.

(2) *The Counsel, DLA (DLA-G)* will provide guidance and assistance to DLA activities concerning legal aspects of this part 1290.

(b) *The Heads of DLA Primary Level Field Activities* will:

(1) Develop and put into effect the necessary regulatory and supervisory procedures to implement this part 1290.

(2) Ensure implementing directives authorize law enforcement/security force (080, 083, 085 and 1800 series) personnel to issue DD Form 1805.

(3) Periodically publish in the PLFA Daily or Weekly Bulletin, a listing of offenses for which mail-in procedures apply, with the amount of the fine for each, and a listing of offenses requiring mandatory appearance of the violator before the U.S. Magistrate. The listings will indicate that they are not necessarily all inclusive and that they are subject to change. A copy of the listings will be provided to the local Union representatives.

§ 1290.8 Procedures.

(a) *The U.S. Magistrate Court Provides DLA* with:

(1) The means to process and dispose of certain categories of minor offenses by mail. Under this system, U.S. Magistrate and District Courts will, by local court rule, preset fines for the bulk of petty violations (Federal or Assimilated) and permit persons charged with such violations, who do not contest the charge nor wish to have a court hearing, to pay their fines by using mail-in, preaddressed, postage paid envelopes furnished to them with the violation notice.

(2) Efficient, minimal commitment of judicial and clerical time by using uniform procedures which centralize the collection of fines, the scheduling of mandatory hearings or hearings where violators request them, and the keeping of violator records.

(3) A simple but sure method of accounting for fines collected and tickets issued.

(4) Impartial enforcement of minor offense laws.

(b) *Court Appearances*—(1) *Mandatory Appearances*. (i) As required by the Administrative Office of the United States Courts, each District Court will determine, by local court rule, those offenses requiring mandatory appearance of violators. PLFA Counsels will coordinate with local magistrates or district courts and secure a court approved list of offenses requiring mandatory appearance of violators before the local U.S. Magistrate.

(ii) Mandatory appearance offense categories normally include:

(A) Indictable offenses.

(B) Offenses resulting in accidents.

(C) Operation of motor vehicle while under the influence of intoxicating alcohol or a narcotic or habit producing or other mind altering drug, or permitting another person who is under the influence of intoxicating alcohol, or a narcotic or habit producing or mind altering drug to operate a motor vehicle owned by the defendant or in his/her custody or control.

(D) Reckless driving or speeding.

(2) Voluntary Appearances—(i) *Requested by violators at the time DD Form 1805 is issued*. (A) Personnel issuing DD Form 1805 will refer violator for hearings before U.S. Magistrates in each instance where a hearing is requested by the violator.

(B) Command security officers will provide security force personnel with necessary information to facilitate scheduling violators to appear before U.S. Magistrates. Box B of the DD Form 1805 will be marked by the issuing official for each violator requesting a hearing. Additionally procedures set forth in appendix A will be

accomplished by the official issuing violation notice.

(ii) *Requested by violators by mail.* (A) Voluntary appearance procedures are also available for violators who are not present at the time a DD Form 1805 is issued (i.e., parking violations) or who subsequently decide to voluntarily appear before a U.S. Magistrate rather than pay the fine indicated in the DD Form 1805.

(B) Violators who use the mail-in procedure to voluntarily appear before a U.S. Magistrate must follow the instructions in Box B of the DD Form 1805 (violator copy). The violator will be notified by the clerk of the District Court of the time and place to appear for the scheduled hearing.

§ 1290.9 Forms and reports.

(a) *General information on preparation and issue of DD Form 1805.* (1) The U.S. Magistrate system is based on use of a four-ply ticket designed to provide legal notice to violators and records required by the court, law enforcement authorities, and, if appropriate, the state motor vehicle departments. The DD Form 1805 is printed on chemically carbonized paper and prenumbered in series for accounting control. Heads of DLA primary level field activities are responsible for maintaining accountability for each ticket issued and stocks on hand.

(2) DLA field activity Counsels will coordinate with the U.S. Magistrate of the judicial district in which the activity is located and maintain the information listed below:

(i) List of petty offenses for which mail-in procedure is authorized and the amount of the fine for each specific offense. The District Court address will be prestamped on the violator's copy of the DD Form 1805 by the applicable issuing authority.

(ii) List of minor offenses requiring mandatory appearance of the violator before the magistrate. The name and location of the magistrate before whom violators will appear. Schedule will be coordinated with nearest Military Service activity and appearance will be conducted jointly whenever possible.

(b) *Issue procedures for DD Form 1805.* (1) Information entered on the DD Form 1805 is dependent upon two considerations:

(i) The type of violation, i.e., parking, (such as blocking a fire lane) moving traffic violation, or nontraffic offenses.

(ii) Whether the offense cited requires the mandatory appearance of the violator before a U.S. Magistrate.

(2) Preparation and disposition of DD Form 1805:

(i) See illustration in appendix B for petty offenses where the mail-in fine procedures are authorized.

(A) The amount of the fine for a specific offense must be recorded in the lower right corner of the DD Form 1805. This amount will always be predetermined by the U.S. Magistrate and provided to on duty enforcement personnel by the activity security officer or equivalent authority. When violation notices are issued for an offense (e.g., parking violation) and the offender is absent, all entries concerning the violator will be left blank.

(B) Disposition of DD Form 1805 will be as follows:

(*1*) The fourth copy (envelope) will be issued to the violator or placed on the vehicle of the violator.

(*2*) Copies one (white copy), two (yellow copy), and three (pink copy) will be returned to the Security Officer's office. The Security Officer will forward copies one and two, by letter of transmittal, to the appropriate U.S. District Court.

(*3*) Copy three will be filed at the Security Office or equivalent issuing authority. DLA Form 1454, Vehicle Registration/Driver Record, will be annotated with each traffic offense.

(ii) When DD Form 1805 is used to cite personnel for mail-in type violations, the appropriate supervisor will be provided an information copy of DLA Form 635, Security/Criminal Incident Report, denoting the date, time, place, and type of violation, and the amount of fine assessed.

(iii) Heads of DLA primary level field activities or their representative will not accept or otherwise collect any fines or keep records of fines paid or not paid. They also will take no action concerning nonpayment delinquencies

except where warrants are subsequently issued for the violator concerned by the appropriate court authorities.

(iv) See illustrations in appendices C and D for minor offenses requiring the mandatory appearance of violators before the U.S. Magistrate:

(A) Mail-in fine procedures will not apply in mandatory appearance cases. The law enforcement authority issuing a violation notice for an offense requiring mandatory appearance of the violator, will place a check mark in "Box A", DD Form 1805. The name and location of the U.S. Magistrate before whom the violator must appear will be inserted on the line below "United States District Court" as shown in appendix C. The date and time of the initial appearance will be entered in the space provided in "Box A". It is the violator's responsibility to verify the date, time, and place of required court appearances.

(B) Disposition of DD Form 1805 will be as follows:

(*1*) The fourth copy (envelope) will be issued to the violator.

(*2*) Copies one (white copy), two (yellow copy), and three (pink copy) will be returned to the Security Officer's office. The Security Officer will forward copies one and two, by transmittal as soon as possible, to the magistrate before whom the violator is scheduled to appear.

(*3*) Copy three will be filed in the office of the Security Officer or equivalent issuing authority.

(C) When DD Form 1805 is used to cite personnel for mandatory appearance type offenses, the individual's supervisor will be provided an information copy of DLA Form 635, denoting the date, time, place, and type of violation, and the date the violator is scheduled to appear before the U.S. Magistrate.

(v) Additional information governing preparation of DD Form 1805 is provided as appendix A.

APPENDIX A TO PART 1290—PREPARATION GUIDE FOR DD FORM 1805, VIOLATION NOTICE

All violations will require:

Last four digits of the Social Security Number of the Issuing guard/police officer (placed in space marked "Officer No."). Date of notice (is also violation date unless otherwise shown) and time. Description of violation, including place noted. Violation code number and issuing location code number (as determined by local Magistrate/District Court). Examples are shown at appendices B, C, and D.

In addition to above items

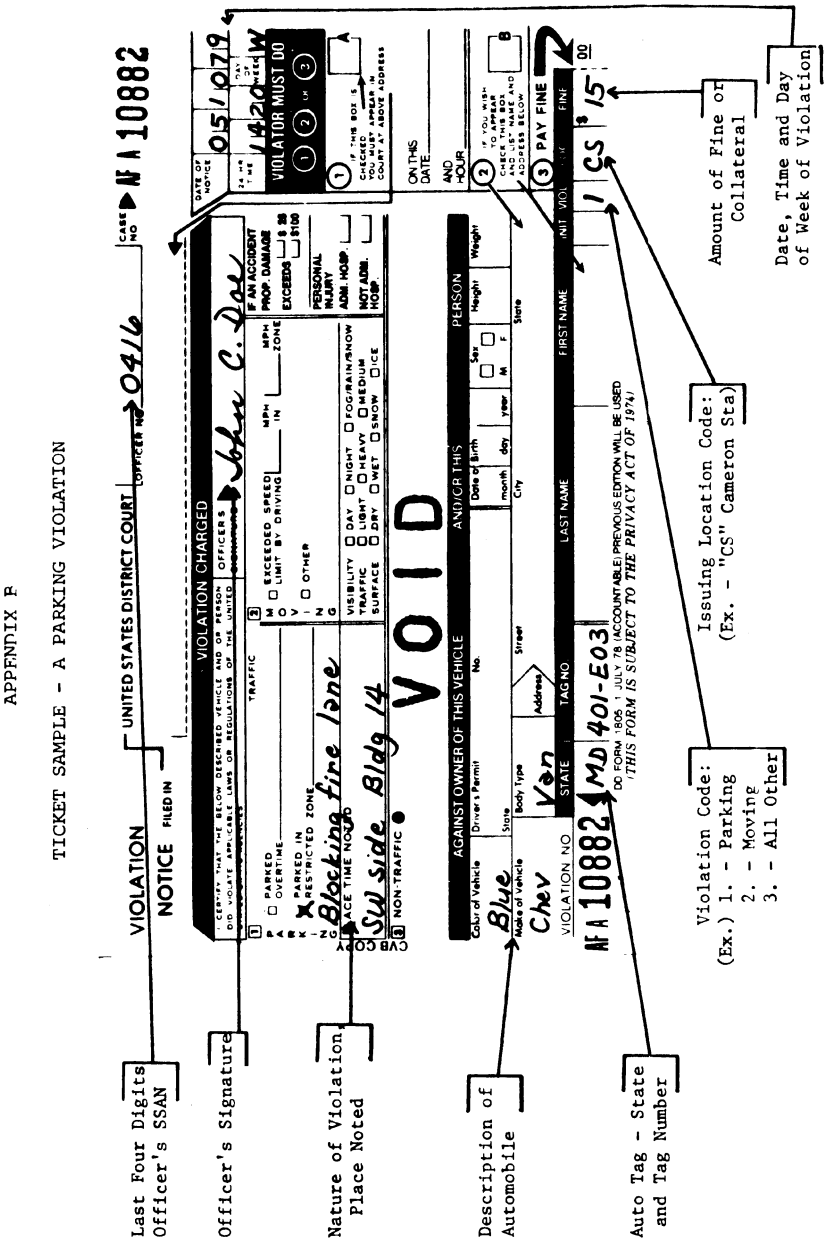
Parking offenses require: Vehicle description (make, color, body type), licensing state, auto license number; and, if violator is present: Driver permit number, driver address, driver's name (all of above items and); moving traffic offenses require: Birth date and sex, race (if it appears on driver's permit), height and weight.

Nontraffic offenses require: Statute violated, person's name, person's address, birth date, and sex; and, if applicable: Race, height, and weight.

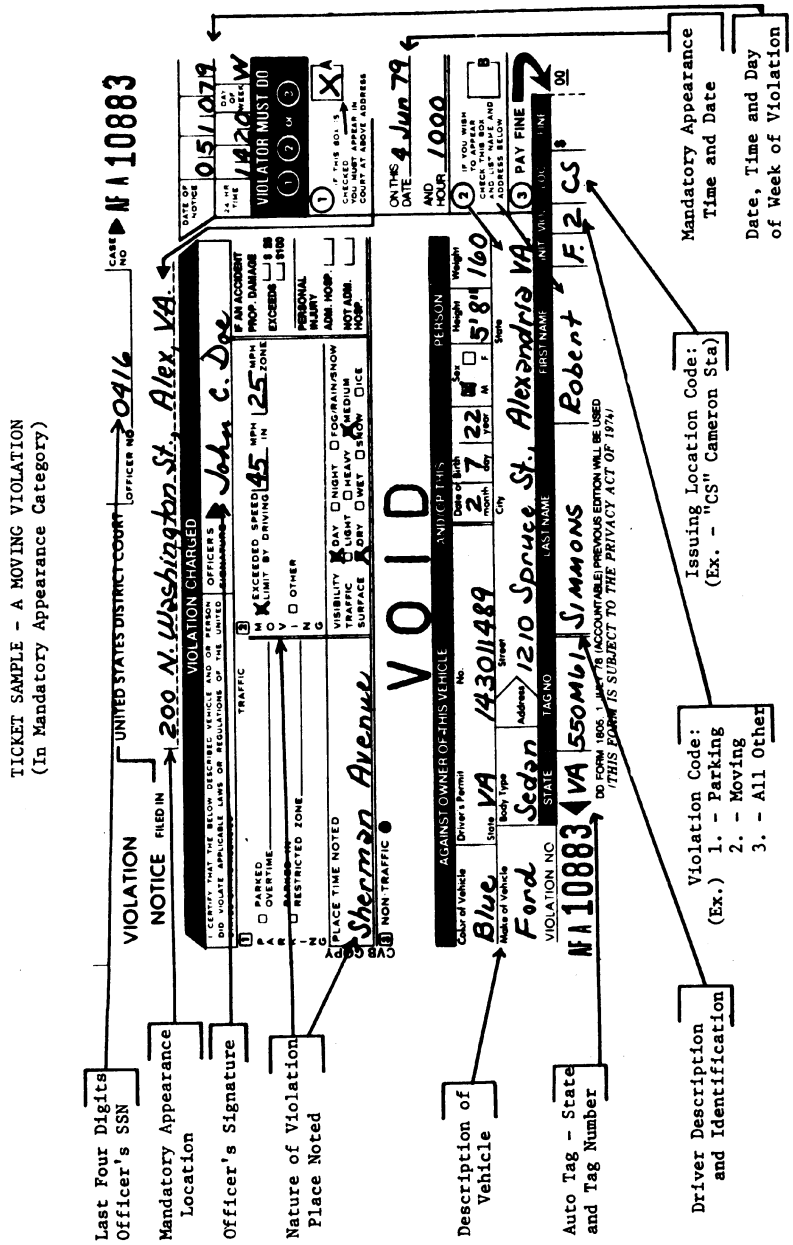
All mailable disposition offenses—amount of fine (collateral).

All mandatory court offenses—Above data, as appropriate, and the place of court (i.e., Magistrate Court Address), the date and time of appearance (if known by officer), and check mark in Box "A".

APPENDIX B TO PART 1290—TICKET SAMPLE—A PARKING VIOLATION

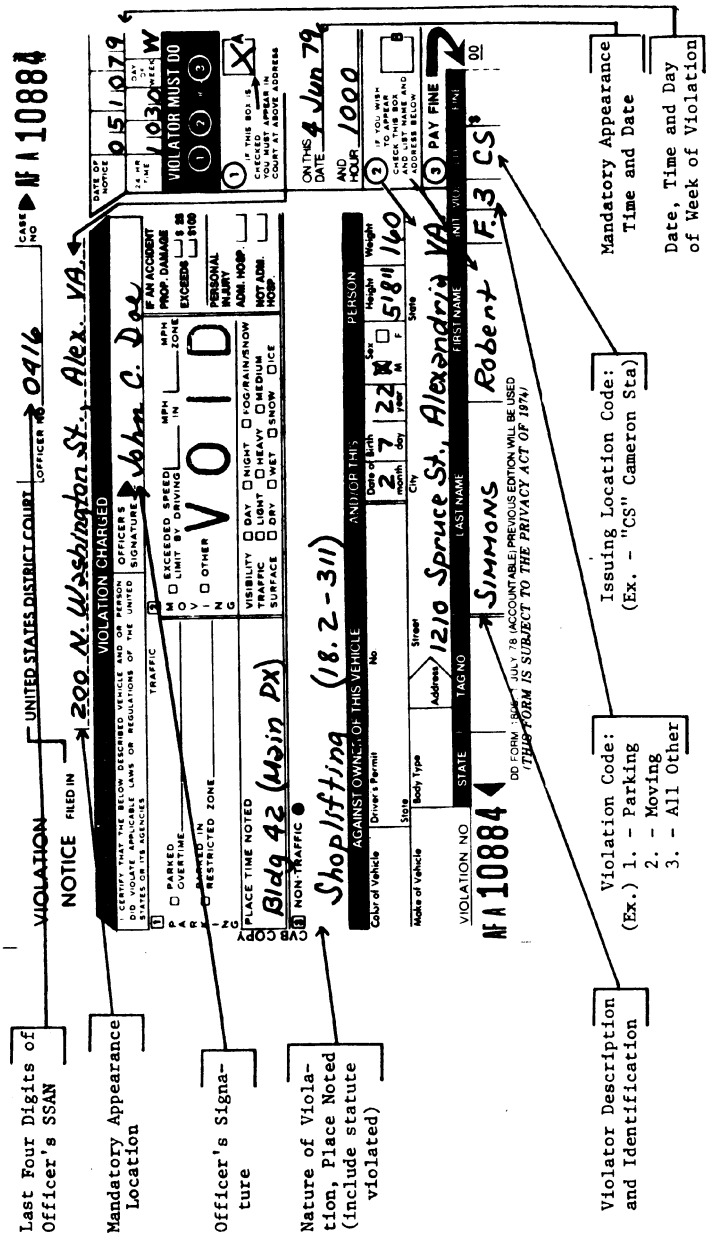


APPENDIX C TO PART 1290—TICKET SAMPLE—A MOVING VIOLATION



APPENDIX D TO PART 1290—TICKET SAMPLE—A NONTRAFFIC VIOLATION

APPENDIX D
TICKET SAMPLE - A NONTRAFFIC VIOLATION
(In Mandatory Appearance Category)



PART 1292—SECURITY OF DLA ACTIVITIES AND RESOURCES

Sec.
1292.1 Purpose and scope.
1292.2 Policy.
1292.3 Background.
1292.4 Responsibilities.
1292.5 Procedures.
APPENDIX A TO PART 1292—SECTION 21 OF THE INTERNAL SECURITY ACT OF 1950

AUTHORITY: DoD Directive 5200.8 and in accordance with Sec. 21 of the Internal Security Act of 1950, 50 U.S.C. 797.

SOURCE: 46 FR 13216, Feb. 20, 1981, unless otherwise noted.

§ 1292.1 Purpose and scope.

"To establish policy, assign responsibilities, and prescribe procedures for the issuance of security regulations and orders by Heads of DLA activities. This part 1292 implements DoD Directive 5200.8, Security of Military Installations and Resources, and is applicable to HQ DLA, DLA field activities and property/places subject to the jurisdiction or administration of the Defense Logistics Agency.

§ 1292.2 Policy.

(a) Military Heads of DLA field activities are authorized to issue or approve necessary security regulations and orders for the protection of property and places under their jurisdiction/administration. Regulations and orders for the protection of property and personnel of subordinate activities headed by civilians shall be promulgated by the military commander in the chain of command immediately above such subordinate activity.

(b) Regulations and orders for the protection of property and personnel of primary level field activities (PLFAs) headed by civilians, and subordinate activities of such PLFAs which likewise are headed by civilians, shall be promulgated by the Director, DLA/Deputy Director/Deputy Director, CAS.

(c) Heads of DLA field activities that are tenants on a military reservation, post, camp, station, installation, base, or Government-owned or leased facility administered by another command or agency are responsible for protection of property and places under their command and may issue security regulations and orders in fulfillment of their responsibility to protect property and places under their jurisdiction and administration. However, separate security regulations and orders should not be issued when the host has issued security regulations and orders that afford protection to the DLA activity.

(d) Detailed physical security and emergency plans developed in conjunction with these security regulations and orders will be as prescribed by DLAM 5710.1, Physical Security Manual, and DLA War and Emergency Support Plan (WESP), part II, Annex A.

§ 1292.3 Background.

Section 21 of the Internal Security Act of 1950 (appendix A) authorizes the Secretary of Defense to designate military commanders to promulgate or approve regulations and orders for the protection of property and places under their command. DoD Directive 5200.8 designates military commanders of Army, Navy, Air Force, and Defense Agency activities as having authority to promulgate regulations and orders pursuant to the Internal Security Act of 1950.

§ 1292.4 Responsibilities.

(a) *HQ DLA*. (1) The Director, DLA/Deputy Director/Deputy Director, CAS will issue necessary security regulations and orders for PLFAs headed by civilians.

(2) The Command Security Officer, DLA (DLA-T) will:

(i) Provide technical staff guidance on the issuance of security regulations and orders.

(ii) Keep the Director, DLA informed of violations of regulations/orders as reported.

(b) *Field Activities*. (1) The Heads of Primary Level Field Activities will:

(i) Publish a physical security plan which provides proper and economical use of personnel and equipment to prevent or minimize loss or damage from theft, espionage, sabotage, and other criminal or disruptive activities.

(ii) Report violations of security regulations and orders to HQ DLA, ATTN: DLA-T, in accordance with DLAR 5705.1, Reporting of Security and Criminal Violations.

(2) The Military Heads of DLA field activities will issue security regulations and orders as necessary for the protection of places and property under their jurisdiction pursuant to the provisions of this part 1292 and other pertinent directives.

§ 1292.5 Procedures.

(a) Security regulations and orders will be promulgated by any of the following means:

(1) Written directives of the activity Head.

(2) Signs and similar media.

(3) Orally, when required by a contingency/emergency.

(b) Written directives and orders will contain so much of the following statement as is pertinent:

This order (directive, bulletin, etc.) is issued pursuant to section 21, Internal Security Act of 1950, 50 U.S.C. 797, DoD Directive 5200.8, DLAR 5710.1, (directive issued by the Head of a DLA field activity subordinate to HQ DLA).

(c) Signs used as the sole vehicle for issuing a security regulation or order must contain a recitation of the authority under which issued and the title of the authorized official who issued the regulation or order. DLAM 5710.1, chapter 3, contains instructions on the exact wording of such signs.

(d) Oral orders will include a statement which clearly indicates the authority for issuance similar to the provisions of paragraph (b) of this section.

(e) Written security orders and regulations will be posted in conspicuous and appropriate places to ensure widest dissemination. The posting of a general security regulation/order, or a listing of applicable directives, will suffice provided it cites the authority to issue such directive. The posting of voluminous, individual security regulations and orders will be avoided.

APPENDIX A TO PART 1292—SECTION 21 OF THE INTERNAL SECURITY ACT OF 1950

797. Security regulations and orders; penalty for violation

(a) Whoever willfully shall violate any such regulation or order as, pursuant to lawful authority, shall be or has been promulgated or approved by the Secretary of Defense, or by any military commander designated by the Secretary of Defense, or by the Director of the National Advisory Committee for Aeronautics, for the protection or security of military or naval aircraft, airports, airport facilities, vessels, harbors, ports, piers, waterfront facilities, bases, forts, posts, laboratories, stations, vehicles, equipment, explosives, or other property or places subject to the jurisdiction, administration, or in the custody of the Department of Defense, any Department or agency of which said Department consists, or any officer or employeee of said Department or agency, or of the National Advisory Committee for Aeronautics or any officer or employee thereof, relating to fire hazards, fire protection, lighting, machinery, guard service, disrepair, disuse or other unsatisfactory conditions thereon, or the ingress thereto or egress or removal of persons therefrom, or otherwise providing for safeguarding the same against destruction, loss, or injury by accident or by enemy action, sabotage or other subversive actions, shall be guilty of a misdemeanor and upon conviction thereof shall be liable to a fine of not to exceed $5,000 or to imprisonment for not more than one year or both.

(b) Every such regulation or order shall be posted in conspicuous and appropriate places. Sept. 23, 1950, c. 1024, Title I, Par. 21, 64 Stat. 1005.

CHAPTER XVI—SELECTIVE SERVICE SYSTEM

Part		*Page*
1600–1601	[Reserved]	
1602	Definitions	303
1605	Selective Service System organization	304
1609	Uncompensated personnel	310
1615	Administration of registration	311
1618	Notice to registrants	312
1621	Duty of registrants	313
1624	Inductions	314
1627	Volunteers for induction	317
1630	Classification rules	318
1633	Administration of classification	324
1636	Classification of conscientious objectors	326
1639	Classification of registrants preparing for the ministry	330
1642	Classification of registrants deferred because of hardship to dependents	332
1645	Classification of ministers of religion	334
1648	Classification by local board	336
1651	Classification by District Appeal Board	338
1653	Appeal to the President	340
1656	Alternative service	342
1657	Overseas registrant processing	351
1659	Extraordinary expenses of registrants	352
1662	Freedom of Information Act (FOIA) procedures	352
1665	Privacy Act procedures	356
1690	[Reserved]	
1697	Salary offset	362
1698	Advisory opinions	366
1699	Enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by Selective Service System	367

PARTS 1600–1601 [RESERVED]

PART 1602—DEFINITIONS

Sec.
1602.1 Definitions to govern.
1602.2 Administrative classification.
1602.3 Aliens and nationals.
1602.4 Area office.
1602.5 Area office staff.
1602.6 Board.
1602.7 Classification.
1602.8 Classifying authority.
1602.9 Computation of time.
1602.10 County.
1602.11 District appeal board.
1602.12 Governor.
1602.13 Judgmental Classification.
1602.14 Local board.
1602.15 Local board of jurisdiction.
1602.16 MEPS.
1602.17 Military service.
1602.18 National Appeal Board.
1602.19 Numbers.
1602.20 Registrant.
1602.21 Selective Service Law.
1602.22 Singular and plural.
1602.23 State.
1602.24 Claim.
1602.25 Director.

AUTHORITY: Military Selective Service Act, 50 U.S.C. App. 451 *et seq.*; E.O. 11623.

SOURCE: 42 FR 4643, Feb. 1, 1982, unless otherwise noted.

§ 1602.1 Definitions to govern.

The definitions contained in section 16 of the Military Selective Service Act, and the definitions contained in this part shall govern in the interpretation of the regulations of this chapter.

§ 1602.2 Administrative classification.

A reclassification action relating to a registrant's claim for Class 1-C, 1-D-D, 1-D-E, 1-H, 1-O-S, 1-W, 3-A-S, 4-A-A, 4-A, 4-B, 4-C, 4-F, 4-G, 4-T, or 4-W. These classes shall be identified as administrative classes.

[52 FR 24454, July 1, 1987]

§ 1602.3 Aliens and nationals.

(a) The term *alien* means any person who is not a citizen or national of the United States.

(b) The term *national of the United States* means:

(1) A citizen of the United States, or

(2) A person, though not a citizen of the United States, who owes allegiance to the United States.

§ 1602.4 Area office.

The Selective Service Office which is responsible for all administrative and operational support for the one or more local boards within its jurisdiction.

§ 1602.5 Area office staff.

The compensated employees, civilian and military, of the Selective Service System employed in an area office will be referred to as the area office staff.

§ 1602.6 Board.

The word *board* when used alone, unless the context otherwise indicates, includes a local board, district appeal board, and the National Appeal Board and panels thereof.

§ 1602.7 Classification.

Classification is the exercise of the power to determine claims or questions with respect to inclusion for or exemption or deferment from training and service under Selective Service Law.

§ 1602.8 Classifying authority.

The term *classifying authority* refers to any official or board who is authorized in §1633.1 to classify a registrant.

§ 1602.9 Computation of time.

Unless otherwise specified the period of days allowed a registrant or other person to perform any act or duty required of him shall be counted as beginning on the day following that on which the notice is issued.

§ 1602.10 County.

The word *county* includes, where applicable, counties, independent cities, and similar subdivisions, such as the independent cities of Virginia and the parishes of Louisiana.

§ 1602.11 District appeal board.

A district appeal board or a panel thereof of the Selective Service System is a group of not less than three civilian members appointed by the President to act on cases of registrants in

accordance with the provisions of parts 1651 and 1656 of this chapter.

[69 FR 20543, Apr. 16, 2004]

§ 1602.12 Governor.

The word *Governor* includes, where applicable, the Governor of each of the States of the United States, the Mayor of the District of Columbia, the Governor of Puerto Rico, the Governor of the Virgin Islands, and the Governor of Guam.

§ 1602.13 Judgmental Classification.

A classification action relating to a registrant's claim for Class 1-A-O, 1-O, 2-D, 3-A, or 4-D.

§ 1602.14 Local board.

A local board or a panel thereof of the Selective Service System is a group of not less than three civilian members appointed by the President after nomination by a Governor to act on cases of registrants in accord with the provisions of part 1648 of this chapter.

[52 FR 24454, July 1, 1987]

§ 1602.15 Local board of jurisdiction.

The local board of jurisdiction is the local board to which a registrant is assigned and which has authority, in accord with the provisions of this chapter, to determine his claim or to issue to him an order. *His local board* and *registrant's local board* refer to the local board of jurisdiction.

[52 FR 24454, July 1, 1987]

§ 1602.16 MEPS.

A Military Entrance Processing Station is a military installation to which registrants are ordered to report for examination or induction.

§ 1602.17 Military service.

The term *military service* includes service in the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

§ 1602.18 National Appeal Board.

The National Appeal Board or a panel thereof of the Selective Service System is a group of not less than three civilian members appointed by the President to act on cases of registrants in accord with the provisions of part 1653 of this chapter.

[52 FR 24454, July 1, 1987]

§ 1602.19 Numbers.

Cardinal numbers may be expressed by Arabic or Roman symbols.

§ 1602.20 Registrant.

A *registrant* is a person registered under the Selective Service Law.

§ 1602.21 Selective Service Law.

The term *Selective Service Law* includes the Military Selective Service Act, all rules and regulations issued thereunder, and Proclamations of the President pertaining to registration under that Act.

§ 1602.22 Singular and plural.

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular, except where the context clearly indicates otherwise.

§ 1602.23 State.

The word *State* includes, where applicable, the several States of the United States, the City of New York, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

§ 1602.24 Claim.

A *claim* is a request for postponement of induction or classification into a class other than 1–A.

[52 FR 24454, July 1, 1987]

§ 1602.25 Director.

Director is the Director of Selective Service.

[52 FR 24454, July 1, 1987]

PART 1605—SELECTIVE SERVICE SYSTEM ORGANIZATION

NATIONAL ADMINISTRATION

Sec.
1605.1 Director of Selective Service.
1605.6 National Appeal Board.

REGION ADMINISTRATION

1605.7 Region Manager.

1605.8 Staff of Region Headquarters for Selective Service.

STATE ADMINISTRATION

1605.11 Governor.
1605.12 State Director of Selective Service.
1605.13 Staff of State Headquarters for Selective Service.
1605.14 State Director of Selective Service for New York City.

DISTRICT APPEAL BOARDS

1605.21 Area.
1605.22 Composition and appointment of district appeal boards.
1605.23 Designation.
1605.24 Jurisdiction.
1605.25 Disqualification.
1605.26 Organization and meetings.
1605.27 Minutes of meetings.
1605.28 Signing official papers.

LOCAL BOARDS

1605.51 Area.
1605.52 Composition of local boards.
1605.53 Designation.
1605.54 Jurisdiction.
1605.55 Disqualification.
1605.56 Organization and meetings.
1605.58 Minutes of meetings.
1605.59 Signing official papers.

AREA OFFICE ADMINISTRATION

1605.60 Area.
1605.61 Staff of area offices for selective service.

INTERPRETERS

1605.81 Interpreters.

AUTHORITY: Military Selective Service Act, 50 U.S.C. App. 451 *et seq.;* E.O. 11623.

SOURCE: 47 FR 4644, Feb. 1, 1982, unless otherwise noted.

NATIONAL ADMINISTRATION

§ 1605.1 Director of Selective Service.

The Director of Selective Service shall be responsible directly to the President. The Director of Selective Service is hereby authorized and directed:

(a) To prescribe such rules and regulations as he shall deem necessary for the administration of the Selective Service System, the conduct of its officers and employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property.

(b) To issue such public notices, orders, and instructions, as shall be necessary for carrying out the functions of the Selective Service System.

(c) To obligate and authorize expenditures from funds appropriated for carrying out the functions of the Selective Service System.

(d) To appoint and to fix, in accordance with provisions of chapter 51 and subchapter III of chapter 53 of title 5 U.S.C., relating to classification and General Schedule pay rates, the compensation of such officers, agents, and employees as shall be necessary for carrying out the functions of the Selective Service System.

(e) To procure such space as he may deem necessary for carrying out the functions of the Selective Service System by lease pursuant to existing statutes.

(f) To obtain by purchase, loan, or gift such equipment, supplies, printing, binding, and blankbook work for the Selective Service System as he may deem necessary to carry out the functions of the Selective Service System.

(g) To perform such other duties as shall be required of him under the Selective Service Law or which may be delegated to him by the President.

(h) To delegate any of his authority to such officers, agents, or persons as he may designate and to provide for the subdelegation of any such authority.

§ 1605.6 National Appeal Board.

(a) There is hereby created and established within the Selective Service System a civilian agency of appeal which shall be known as the National Appeal Board. The President shall appoint not less than three members to the National Appeal Board, and he shall designate one member as chairman.

(b) The President shall appoint members of the National Appeal Board from among citizens of the United States who:

(1) Are not active or retired members of the Armed Forces or any reserve component thereof;

(2) Have not served as a member of the National Appeal Board for a period of more than five years;

(3) Are at least 18 years of age;

(4) Are able to devote sufficient time to duties of the Board; and

(5) Are willing to fairly and uniformly apply Selective Service Law.

(c)(1) A majority of the members of the board shall constitute a quorum for the transaction of business, and a majority of the members present at any meeting at which a quorum is present, shall decide any question.

(2) The National Appeal Board may sit *en banc*, or upon the request of the Director or as determined by the chairman of the National Appeal Board, in panels, each panel to consist of at least three members. The Chairman of the National Appeal Board shall designate the members of each panel and he shall designate one member of each panel as chairman. A majority of the members of a panel shall constitute a quorum for the transaction of business, and a majority of the members present at any meeting at which a quorum is present, shall decide any question. Each panel of the National Appeal Board shall have full authority to act on all cases assigned to it.

(3) The National Appeal Board or a panel thereof shall hold meetings in Washington, DC, and upon request of the Director or as determined by the Chairman of the National Appeal Board, at any other place.

(d) The National Appeal Board or panel thereof shall classify each registrant whose classification has been appealed to the President under part 1653 of this chapter.

(e) No member of the National Appeal Board shall act on the case of a registrant who is the member's first cousin or closer relation either by blood, marriage, or adoption, or who is the member's employer, employee or fellow employee or stands in the relationship of superior or subordinate of the member in connection with any employment, or is a partner or close business associate of the member, or is a fellow member or employee of the National Appeal Board. A member of the National Appeal Board must disqualify himself in any matter in which we would be restricted for any reason in making an impartial decision.

(f) Each member of the National Appeal Board while on the business of the National Appeal Board away from his home or regular place of business shall receive actual travel expenses and per diem in lieu of subsistence in accordance with rates established by Federal Travel Regulations.

(g) The Director shall pay the expenses of the members of the National Appeal Board in accord with applicable Federal Travel Regulations and shall furnish that Board and its panels necessary personnel, suitable office space, necessary facilities and services.

[52 FR 8890, Mar. 20, 1987]

REGION ADMINISTRATION

§ 1605.7 Region Manager.

(a) Subject to the direction and control of the Director of Selective Service, the Region Manager of Selective Service for each region shall be in immediate charge of the Region Headquarters and shall be responsible for carrying out the region functions of the Selective Service System in the various States assigned to the region.

(b) The Region Manager will perform such duties as are prescribed by the Director of Selective Service.

§ 1605.8 Staff of Region Headquarters for Selective Service.

(a) Subject to applicable law, and within the limits of available funds, the staff of each region for Selective Service shall consist of as many officers, either military or civilian, as shall be authorized by the Director of Selective Service.

(b) In accordance with limitations imposed by the Director of Selective Service, the Region Manager is authorized to appoint such civilian personnel as he considers are required in the operation of the Region Headquarters.

STATE ADMINISTRATION

§ 1605.11 Governor.

The Governor is authorized to recommend a person to be appointed by the President as State Director of Selective Service for his State, who shall represent the Governor in all Selective Service matters.

§ 1605.12 State Director of Selective Service.

(a) The State Director of Selective Service for each State, subject to the direction and control of the Director of

Selective Service, shall be in immediate charge of the State Headquarters for Selective Service in his State. The State Headquarters for Selective Service shall be an office of record for Selective Service operations only, and no records other than Selective Service records shall be maintained in such office.

(b) The State Director of Selective Service will perform such duties as are prescribed by the Director of Selective Service.

§ 1605.13 Staff of State Headquarters for Selective Service.

(a) Subject to applicable law and within the limits of available funds, the staff of each State Headquarters for Selective Service shall consist of as many officers, either military or civilian, as shall be authorized by the Director of Selective Service.

(b) In accordance with limitations imposed by the Director of Selective Service, the State Director of Selective Service is authorized to appoint such civilian personnel as he considers are required in the operation of the State Headquarters for Selective Service.

§ 1605.14 State Director of Selective Service for New York City.

The Governor of the State of New York is authorized to recommend a person to be appointed by the President as State Director of Selective Service for New York City, who shall represent the Governor in all Selective Service matters within the City of New York. Subject to the direction and control of the Director of Selective Service, the State Director of Selective Service for New York City shall be in immediate charge of the State Headquarters for Selective Service for New York City and shall perform such duties as are prescribed by the Director of Selective Service. The State Director of Selective Service for the State of New York shall have no jurisdiction in Selective Service matters within the City of New York. The State headquarters of Selective Service for New York City shall be an office of record for Selective Service operations only, and no records other than Selective Service records shall be maintained in such office.

DISTRICT APPEAL BOARDS

§ 1605.21 Area.

The Director of Selective Service shall establish one or more district appeal boards in each of the Federal Judicial Districts in the several states of the United States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. The Director of Selective Service may establish panels of appeal boards.

§ 1605.22 Composition and appointment of district appeal boards.

The Director of Selective Service will prescribe the number of members for the district appeal boards. The President shall appoint members of district appeal boards from among citizens of the United States who are residents of the area for which the respective boards have jurisdiction. The Director of Selective Service shall furnish necessary personnel, suitable office space, facilities and services to support each district appeal board.

§ 1605.23 Designation.

The Director of Selective Service shall assign each district appeal board within a Federal Judicial District a specific identification by which it shall be known. If a district appeal board consists of more than one panel, each panel shall have a specific identifying number. Such numbers shall be assigned in numerical sequence beginning with numeral 1.

§ 1605.24 Jurisdiction.

(a) The district appeal board shall have jurisdiction to review and to affirm or change any local board decision appealed to it when:

(1) An appeal is submitted by a registrant from a local board in its area; or

(2) An appeal is submitted to it from a local board not in the appeal board area by a registrant whose principal place of employment or residence is located within the jurisdiction of the appeal board; or

(3) An appeal is submitted or transferred to it by the Director of Selective Service to assure the fair and equitable administration of the Law.

(b) The district appeal board shall have jurisdiction to review and to affirm or change any Alternative Service Office Manager decision appealed to it by an Alternative Service Worker pursuant to part 1656 of this chapter.

[47 FR 4644, Feb. 1, 1982, as amended at 69 FR 20543, Apr. 16, 2004]

§ 1605.25 Disqualification.

(a) No member of a district appeal board shall act on the case of a registrant who is the member's first cousin or closer relation, either by blood, marriage, or adoption, or who is the member's employer, employee, or fellow employee, or stands in the relationship of superior or subordinate of the member in connection with any employment, or is a partner or close business associate of the member, or is a fellow member or employee of the board.

(b) A member of a district appeal board must disqualify himself in any matter in which he would be restricted for any reason in making an impartial decision.

(c) Whenever a quorum of the district appeal board or a panel thereof cannot act on the case of a registrant that it has been assigned, and there is no other panel of the district appeal board to which the case may be transferred, the district appeal board shall transmit such case to the director of Selective Service for transfer to another district appeal board.

§ 1605.26 Organization and meetings.

Each district appeal board, or panel thereof, shall elect a chairman and a vice-chairman at least every two years. A majority of the members of the board when present at any meeting shall constitute a quorum for the transaction of business. A majority of the members present at any meeting at which a quorum is present shall decide any question. Every member, unless disqualified, shall vote on every question or classification. In case of a tie vote on a question or classification, the board shall postpone action until the next meeting. If the question or classification remains unresolved at the next meeting, the file will be transferred for classification in accord with § 1605.25(c). If any member is absent so long as to hamper the work of the board, the chairman, a member of the board or panel concerned, or an area office employee shall report that fact to the Director of Selective Service and such action as appropriate shall be taken. If, through death, resignation, or other causes, the membership of the board falls below the prescribed number of members, the board or panel shall continue to function, provided a quorum of the prescribed membership is present at each official meeting.

§ 1605.27 Minutes of meetings.

A Selective Service compensated employee will keep the minutes of each appeal board meeting. In the absence of a compensated employee the minutes will be kept by an appeal board member.

§ 1605.28 Signing official papers.

Official documents issued and minutes of meetings maintained by a district appeal board may be signed by any member of the board, or by any compensated employee of the Selective Service System authorized to perform administrative duties for the board, except when otherwise prescribed by the Director of Selective Service.

LOCAL BOARDS

§ 1605.51 Area.

(a) The Director of Selective Service shall divide each State into local board areas and establish local boards. There shall be at least one local board in each county except where the Director of Selective Service establishes an intercounty board. When more than one local board is established within the same geographical jurisdiction, registrants residing in that area will be assigned among the boards as prescribed by the Director of Selective Service. The Director of Selective Service may establish panels of local boards.

(b) [Reserved]

[47 FR 4644, Feb. 1, 1982, as amended at 52 FR 24454, July 1, 1987]

§ 1605.52 Composition of local boards.

The Director of Selective Service shall prescribe the number of members of local boards.

§ 1605.53 Designation.

The Director of Selective Service shall assign each local board within a State a specific identifying number by which it shall be known. Such identifying numbers shall be assigned in numerical sequence beginning with the numeral 1.

§ 1605.54 Jurisdiction.

The local board shall have full authority to perform all acts within its jurisdiction authorized by law, to include the acting on any claim presented to it when:

(a) The claim is submitted by a registrant who is assigned to it; or

(b) The claim is transferred to it from another board in the manner provided in these regulations; or

(c) The claim is submitted or tranferred to it by the Director of Selective Service to assure the fair and equitable administration of the Law.

§ 1605.55 Disqualification.

(a) No member of a local board shall act on the case of a registrant who is the member's first cousin or closer relation, either by blood, marriage, or adoption, or who is the member's employer, employee, or fellow employee, or stands in the relationship of superior or subordinate of the member in connection with any employment, or is a partner or close business associate of the member, or a fellow member or employee of the area office.

(b) A member of the local board must disqualify himself in any matter in which he would be restricted, for any reason, in making an impartial decision.

(c) Whenever a quorum of a local board cannot act on the case of a registrant, the area office supervisor shall cause such case to be transferred to another board within the area office. In those instances where only one board exists in an area office, the case should be transmitted to the nearest area office for transfer to a board under its jurisdiction.

§ 1605.56 Organization and meetings.

Each local board shall elect a chairman and vice-chairman at least every two years. A majority of the membership of the board shall constitute a quorum for the transaction of business. A majority of the members present at any meeting at which a quorum is present shall decide any question or classification. Every member present, unless disqualified, shall vote on every question or classification. In case of a tie vote on any question or classification, the board shall postpone action on the question or classification until it can be decided by a majority vote at the next meeting. If the question or classification remains unresolved at the next meeting, the file will be transferred for classification in accord with § 1605.55(c). If any member is absent so long as to hamper the work of the board, the chairman, a member of the board, or a Selective Service compensated employee shall report that fact to the Director of Selective Service and appropriate action shall be taken. If through death, resignation, or other cause, the membership of a board falls below the prescribed number, it shall continue to function provided a quorum of the prescribed membership is present at each official meeting.

§ 1605.58 Minutes of meetings.

A compensated employee of the appropriate area office will keep the minutes of each meeting of a local board. In the absence of a compensated employee the minutes will be kept by a board member.

§ 1605.59 Signing official papers.

Official papers issued by a local board may be signed by any member of the board or compensated employee of the area office, or any compensated employee of the Selective Service System whose official duties require him to perform administrative duties at the area office except when otherwise prescribed by the Director of Selective Service.

AREA OFFICE ADMINISTRATION

§ 1605.60 Area.

(a) The Director of Selective Service shall prescribe the number of area offices to be established and shall define the boundaries thereof.

(b) The area office shall be an office of record and responsible for all administrative and operational support of the one or more local boards within its jurisdiction.

§ 1605.61 Staff of area offices for selective service.

Subject to applicable law and within the limits of available funds, the staff of each area office shall consist of as many compensated employees, either military or civilian, as shall be authorized by the Director of Selective Service.

INTERPRETERS

§ 1605.81 Interpreters.

(a) The local board, district appeal board and the National Selective Service Appeal Board are authorized to use interpreters when necessary.

(b) The following oath shall be administered by a member of the board or a compensated employee of the System to an interpreter each time he or she interprets:

Do you swear (or affirm) that you will truly interpret in the matter now in hearing?

(c) Any interpreter who fails to respond in the affirmative shall not be permitted to function in this capacity.

[47 FR 4644, Feb. 1, 1982, as amended at 52 FR 24454, July 1, 1987]

PART 1609—UNCOMPENSATED PERSONNEL

Sec.
1609.1 Uncompensated positions.
1609.2 Citizenship.
1609.3 Eligibility.
1609.4 Oath of office.
1609.5 Suspension.
1609.6 Removal.
1609.7 Use of information.

AUTHORITY: Military Selective Service Act, 50 U.S.C. App. 451 *et seq;* E.O. 11623.

SOURCE: 47 FR 4647, Feb. 1, 1982, unless otherwise noted.

§ 1609.1 Uncompensated positions.

Members of local boards, district appeal boards, and all other persons volunteering their services to assist in the administration of the Selective Service Law shall be uncompensated. No person serving without compensation shall accept remuneration from any source for services rendered in connection with Selective Service matters.

[52 FR 24454, July 1, 1987, as amended at 69 FR 20544, Apr. 16, 2004]

§ 1609.2 Citizenship.

No person shall be appointed to any uncompensated position in the Selective Service System who is not a citizen of the United States.

§ 1609.3 Eligibility.

(a) The President, upon the recommendation of the respective Governors, will consider for appointment as a member of a local board, any person who:

(1) Is within the age limits prescribed by the Military Selective Service Act; and

(2) Is a citizen of the United States; and

(3) Is a resident of the county in which the local board has jurisdiction; and

(4) Is not an active or retired member of the Armed Forces or any reserve component thereof; and

(5) Has not served as a member of a Selective Service board for a period of more than 20 years; and

(6) Is able to perform such duties as necessary during standby status; and

(7) Is able to devote sufficient time to board affairs; and

(8) Is willing to fairly and uniformly apply Selective Service Law.

(b) The President, upon the recommendation of the Director of Selective Service, will consider for appointment as a member of a district appeal board any person who:

(1) Is within the age limits prescribed by the Military Selective Service Act; and

(2) Is a citizen of the United States; and

(3) Is a resident of the Federal Judicial District in which the district appeal board has jurisdiction; and

(4) Is not an active or retired member of the Armed Forces or any reserve component thereof; and

(5) Has not served as a member of a Selective Service board for a period of more than 20 years; and

(6) Is able to perform such duties as necessary during standby status; and

(7) Is able to devote sufficient time to the district appeal board affairs; and

(8) Is willing to fairly and uniformly apply Selective Service Law.

§ 1609.4 Oath of office.

Every person who undertakes to render voluntary uncompensated service in the administration of the Selective Service Law shall execute an Oath of Office and Waiver of Pay before he enters upon his duties.

§ 1609.5 Suspension.

The Director of Selective Service may suspend from duty any uncompensated person engaged in the administration of the Selective Service Law pending his consideration of the advisability of removing such person.

§ 1609.6 Removal.

(a) The Director of Selective Service may remove any uncompensated person engaged in the administration of the Selective Service Law.

(b) The Governor may recommend to the Director of Selective Service the removal, for cause, of the State Director or any uncompensated person engaged in the administration of the Selective Service Law in his State. The Director of Selective Service shall make such investigation of the Governor's recommendation as he deems necessary, and upon completion of his investigation, he shall take such action as he deems proper.

§ 1609.7 Use of information.

Any information or records obtained by compensated or uncompensated personnel during the performance of their official duties, including proceedings before the boards, shall be restricted to official use by the personnel of the Selective Service System except as specifically authorized by law.

PART 1615—ADMINISTRATION OF REGISTRATION

Sec.

1615.1 Registration.
1615.2 Responsibility of Director of Selective Service in registration.
1615.3 Registration procedures.
1615.4 Duty of persons required to register.
1615.5 Persons not to be registered.
1615.6 Selective service number.
1615.7 Evidence of registration.
1615.8 Cancellation of registration.
1615.9 Registration card or form.

AUTHORITY: Military Selective Service Act, 50 U.S.C. App. 451 *et seq.*; E.O. 11623, 36 FR 19963, 3 CFR, 1971–1975 Comp., p. 614, as amended by E.O. 12608, 52 FR 34617, 3 CFR, 1987 Comp., p. 245.

SOURCE: 45 FR 48130, July 18, 1980, unless otherwise noted.

§ 1615.1 Registration.

(a) Registration under selective service law consists of:

(1) Completing a registration card or other method of registration prescribed by the Director of Selective Service by a person required to register; and

(2) The recording of the registration information furnished by the registrant in the records (master computer file) of the Selective Service System. Registration is completed when both of these actions have been accomplished.

(b) The Director of Selective Service will furnish to each registrant a verification notice that includes a copy of the information pertaining to his registration that has been recorded in the records of the Selective Service System together with a correction form. If the information is correct, the registrant should take no action. If the information is incorrect, the registrant should forthwith furnish the correct information to the Director of Selective Service. If the registrant does not receive the verification notice within 90 days after he completed a method of registration prescribed by the Director, he shall advise in writing the Selective Service System, P.O. Box 94638, Palatine, IL 60094–4638.

(c) The methods of registration prescribed by the Director include completing a Selective Service Registration Card at a classified Post Office, registration on the Selective Service Internet web site (*http://www.sss.gov*), telephonic registration, registration on approved Federal and State Government forms, registration through high

school and college registrars, and Selective Service remainder mailback card.

[45 FR 48130, July 18, 1980, as amended at 65 FR 47670, Aug. 3, 2000; 65 FR 60101, Oct. 10, 2000]

§ 1615.2 Responsibility of Director of Selective Service in registration.

Whenever the President by proclamation or other public notice fixes a day or days for registration, the Director of Selective Service shall take the necessary steps to prepare for registration and, on the day or days fixed, shall supervise the registration of those persons required to present themselves for and submit to registration. The Director of Selective Service shall also arrange for and supervise the registration of those persons who present themselves for registration at times other than on the day or days fixed for any registration.

§ 1615.3 Registration procedures.

Persons required by selective service law and the Proclamation of the President to register shall be registered in accord with procedures prescribed by the Director of Selective Service.

§ 1615.4 Duty of persons required to register.

A person required by selective service law to register has the duty:

(a) To complete the registration process by a method prescribed by the Director of Selective Service and to record thereon his name, date of birth, sex, Social Security Account Number (SSAN), current mailing address, permanent residence, telephone number, date signed, and signature, if requested; and

(b) To submit for inspection, upon request, evidence of his identity to a person authorized to accept the registration information. Evidence of identity may be a birth certificate, motor vehicle operator's license, student's identification card, United States Passport, or a similar document.

[45 FR 48130, July 18, 1980, as amended at 65 FR 60101, Oct. 10, 2000]

§ 1615.5 Persons not to be registered.

No person who is not required by selective service law or the Proclamation of the President to register shall be registered.

§ 1615.6 Selective service number.

Every registrant shall be given a selective service number. The Social Security Account Number will not be used for this purpose.

§ 1615.7 Evidence of registration.

The Director of Selective Service Shall issue to each registrant written evidence of his registration. The Director of Selective Service will replace that evidence upon written request of the registrant, but such request will not be granted more often than once in any period of six months.

§ 1615.8 Cancellation of registration.

The Director of Selective Service may cancel the registration of any particular registrant or of a registrant who comes within a specified group of registrants.

§ 1615.9 Registration card or form.

For the purposes of these regulations, the terms Registration Card and Registration Form are synonomous.

PART 1618—NOTICE TO REGISTRANTS

Sec.

1618.1 Abandonment of rights or privileges.
1618.2 Filing of documents.
1618.4 Transmission of orders and other official papers to registrants.

AUTHORITY: Military Selective Service Act, 50 U.S.C. App. 451 *et seq.*; E.O. 11623.

SOURCE: 47 FR 4648, Feb. 1, 1982, unless otherwise noted.

§ 1618.1 Abandonment of rights or privileges.

If a registrant fails to claim and exercise any right or privilege within the required time, he shall be deemed to have abandoned the right or privilege unless the Director of Selective Service, for good cause, waives the time limit.

§ 1618.2 Filing of documents.

A document other than a registration card received by an element of the Selective Service System will be considered to have been filed on the date that it is received: *Provided*, That a document that is received which was transmitted by the United States Postal Service (USPS) and was enclosed in a cover that bears a legible USPS postmark date will be deemed to have been received on that date.

§ 1618.4 Transmission of orders and other official papers to registrants.

Personnel of the Selective Service System will transmit orders or other official papers addressed to a registrant by handing them to him personally or mailing them to him to the current mailing address last reported by him in writing to the Selective Service System.

PART 1621—DUTY OF REGISTRANTS

Sec.
1621.1 Reporting by registrants of their current status.
1621.2 Duty to report for and submit to induction.
1621.3 Duty to report for and submit to examination.

AUTHORITY: Military Selective Service Act, 50 U.S.C. App. 451 *et seq.*; E.O. 11623.

§ 1621.1 Reporting by registrants of their current status.

Until otherwise notified by the Director of Selective Service, it is the duty of every registrant who registered after July 1, 1980:

(a) To notify the System within 10 days of any change in the following items of information that he provided on his registration form: name, current mailing address and permanent residence address; and

(b) To submit to the classifying authority, all information concerning his status within 10 days after the date on which the classifying authority mails him a request therefor, or within such longer period as may be fixed by the classifying authority; and

(c) Who has a postponement of induction, or has been deferred or exempted from training and service, to notify the System immediately of any changes in facts or circumstances relating to the postponement, deferment or exemption; and

(d) Who has a postponement of examination, to notify the System immediately of any changes in facts or circumstances relating to the postponement.

[52 FR 24454, July 1, 1987]

§ 1621.2 Duty to report for and submit to induction.

When the Director of Selective Service orders a registrant for induction, it shall be the duty of the registrant to report for and submit to induction at the time and place ordered unless the order has been canceled. If the time when the registrant is ordered to report for induction is postponed, it shall be the continuing duty of the registrant to report for and submit to induction at such time and place as he may be reordered. Regardless of the time when or the circumstances under which a registrant fails to report for induction when it is his duty to do so, it shall thereafter be his continuing duty from day to day to report for and submit to induction at the place specified in the order to report for induction.

[47 FR 4648, Feb. 1, 1982]

§ 1621.3 Duty to report for and submit to examination.

When the Director orders a registrant for examination, it shall be the duty of the registrant to report for and submit to examination at the time and place ordered unless the order has been canceled. If the time when the registrant is ordered to report for examination is postponed, it shall be the continuing duty of the registrant to report for and submit to examination at such time and place as he may be reordered. Regardless of the time when, or the circumstances under which a registrant fails to report for examination when it is his duty to do so, it shall thereafter be his continuing duty from day to day to report for and submit to examination at the place specified in the order to report for examination.

[52 FR 8890, Mar. 20, 1987]

PART 1624—INDUCTIONS

Sec.
1624.1 Random selection procedures for induction.
1624.2 Issuance of induction orders.
1624.3 Age selection groups.
1624.4 Selection and/or rescheduling of registrants for induction.
1624.5 Order to report for induction.
1624.6 Postponement of induction.
1624.7 Expiration of deferment or exemption.
1624.8 Transfer for induction.
1624.9 Induction into the Armed Forces.
1624.10 Order to report for examination.

AUTHORITY: Military Selective Service Act, 50 U.S.C. App. 451 *et seq.*: E.O. 11623.

SOURCE: 47 FR 4648, Feb. 1, 1982, unless otherwise noted.

§ 1624.1 Random selection procedures for induction.

(a) The Director of Selective Service shall from time to time establish a random selection sequence for induction by a drawing to be conducted in the place and on a date the Director shall fix. The random selection method shall use 365 days, or when appropriate, 366 days to represent the birthdays (month and day only) of all registrants who, during the specified calendar year(s) attain their 18th year of birth. The drawing, commencing with the first day selected, and continuing until all 365 days or, when appropriate 366 days are drawn, shall be accomplished impartially. The random sequence number thus determined for any registrant shall apply to him so long as he remains subject to induction for military training and service by random selection.

(b) The date of birth of the registrant that appears on his Selective Service Registration Record on the day before the lottery is conducted to establish his random selection sequence will be conclusive as to his date of birth in all matters pertaining to his relations with the Selective Service System.

§ 1624.2 Issuance of induction orders.

The Director of Selective Service, upon receipt of a call from the Secretary of Defense for persons to be inducted into the Armed Forces in accord with § 1624.4, shall issue orders to report for induction to registrants whose registration records are in the master computer file at the beginning of any day on which orders are issued. Orders shall be issued in such numbers and at such times as will assure that such call or requisition is filled. The names contained in the Selective Service System data base on a given day will constitute the valid list of registrants from which induction orders can be issued on that day.

§ 1624.3 Age selection groups.

Age selection groups are established as follows:

(a) The age 20 selection group for each calendar year consists of registrants who have attained or will attain the age of 20 in that year.

(b) The age 21 selection group for each calendar year consists of registrants who have attained or will attain the age of 21 in that year and, in like manner, each age selection group will be so designated through age group 25.

(c) The age 26 through 34 selection groups consist of registrants who meet the following three criteria:

(1) They have attained or will attain the age of 26 through 34, respectively, during the calendar year; *and*

(2) They have been previously ordered to report for induction but have not been inducted; *and*

(3) They have been classified in one of the following classes:

(i) Class 1-D-D.

(ii) Class 2-D.

(iii) Class 3-A.

(iv) Class 4-B.

(v) Class 4-F.

(d) The age 19 selection group for each calendar year consists of registrants who have attained the age of 19 in that year.

(e) The age 18 selection group shall consist of registrants who have attained the age of 18 years and six months and who have not attained the age of 19 years in the order of their dates of birth with the oldest being selected first.

§ 1624.4 Selection and/or rescheduling of registrants for induction.

A registrant in Class 1–A or a registrant subsequently classified 1–A–0

shall be selected and ordered or rescheduled to report for induction in the following categories and in the order indicated: *Provided,* That a registrant who has been identified in accord with the procedures prescribed by the Director of Selective Service as one who will become a member of one of the following categories on the next January 1, may, prior to January 1, be selected and ordered to report for induction on a date after January 1 as a member of such category.

(a) Volunteers for induction in the order in which they volunteered.

(b) Registrants whose postponements have expired in the order of expiration.

(c) Registrants who previously have been ordered to report for induction and whose exemptions or deferments have expired, in the order of their random sequence number (RSN) established by random selection procedures in accord with § 1624.1

(d) Registrants in the age 20 selection group for the current calendar year in the order of their random sequence number (RSN) established by random selection procedures in accord with § 1624.1.

(e) Registrants in each succeeding age selection group commencing with age 21 selection group and terminating with the age 34 selection group, in turn, within the group, in the order of their random sequence number (RSN) established by random selection procedures in accord with § 1624.1.

(f) Registrants in the age 19 selection group for the current calendar year in the order of their random sequence number (RSN) established by random selection procedures in accord with § 1624.1.

(g) Registrants in the age 18 year and six months selection group and who have not attained the age of 19 in the order of their date of birth with the oldest being selected first.

[47 FR 4648, Feb. 1, 1982, as amended at 52 FR 24455, July 1, 1987]

§ 1624.5 Order to report for induction.

(a) Immediately upon determining which persons are to be ordered for induction, the Director of Selective Service shall issue to each person selected an Order to Report for Induction. The order will be sent to the current address most recently provided by the registrant to the Selective Service System. The date specified to report for induction shall be at least 10 days after the date on which the Order to Report for Induction is issued. The filing of a claim for reclassification in accord with § 1633.2 of this chapter delays the date the registrant is required to report for induction until not earlier than the tenth day after the claim is determined to have been abandoned or is finally determined is finally determined in accord with the provisions of this chapter. A claim is finally determined when the registrant does not have the right to appeal the last classification action with respect to the claim or he fails to exercise his right to appeal.

(b) Any person who has been ordered for induction who is distant from the address to which the order was sent must either report at the time and place specified in the order, or voluntarily submit himself for induction processing at another MEPS on or before the day that he was required to report in accordance with his induction order.

(c) The Director of Selective Service may direct the cancellation of any Order to Report for Induction at any time.

(d) Any Order to Report for Induction issued by the Director of Selective Service to a registrant who is an alien, who has not resided in the United States for one year will be void. Such order will be deemed only to be an order to produce evidence of his status. When an alien registrant has been within the United States for two or more periods (including periods before his registration) and the total of such periods equals one year, he shall be deemed to have resided in the United States for one year. In computing the length of such periods, any portion of one day shall be counted as a day. Upon establishing a one year residency, the alien registrant will be assigned to the age selection group corresponding to his age.

[47 FR 4648, Feb. 1, 1982, as amended at 52 FR 24455, July 1, 1987]

§ 1624.6 Postponement of induction.

(a) [Reserved]

(b) In the case of the death of a member of the registrant's immediate family, extreme emergency involving a member of the registrant's immediate family, serious illness or injury of the registrant, or other emergency beyond the registrant's control, the Director, after the Order to Report for Induction has been issued, may postpone for a specific time the date when such registrant shall be required to report. The period of postponement shall not exceed 60 days from the date of the induction order. When necessary, the Director may grant one further postponement, but the total postponement shall not exceed 90 days from the reporting date on the induction order.

(c)(1) Any registrant who is satisfactorily pursuing a full-time course of instruction at a high school or similar institution of learning and is issued an order to report for induction shall, upon presentation of appropriate facts in the manner prescribed by the Director of Selective Service, have his induction postponed:

(i) Until the time of his graduation therefrom; or

(ii) Until he attains the twentieth anniversary of his birth; or

(iii) Until the end of his last academic year, even if he has attained the twentieth anniversary of his birth; or

(iv) Until he ceases satisfactorily to pursue such course of instruction, whichever is the earliest.

(2) Any registrant who, while satisfactorily pursuing a full-time course of instruction at a college, university, or similar institution of learning, is ordered to report for induction shall, upon the presentation of appropriate facts in the manner prescribed by the Director of Selective Service, have his induction postponed:

(i) Until the end of the semester or term, or in the case of his last academic year, the end of the academic year; or

(ii) Until he ceases to satisfactorily pursue such course of instruction, whichever is the earlier.

(3) A postponement authorized by this subsection may be terminated by the Director of Selective Service for cause upon no less than 10 days notice to the registrant.

(d) The Director of Selective Service may authorize a delay of induction for any registrant whose date of induction conflicts with a religious holiday historically observed by a recognized church, religious sect or religious organization of which he is a member. Any registrant so delayed shall report for induction on the next business day following the religious holiday.

(e) [Reserved]

(f) The Director of Selective Service may authorize a postponement of induction to a registrant when:

(1) The registrant qualifies and is scheduled for a State or National examination in a profession or occupation which requires certification before being authorized to engage in the practice of that profession or occupation; or

(2) The registrant has been accepted in the next succeeding class as a cadet at the U.S. Military Academy, or the U.S. Air Force Academy, or the U.S. Coast Guard Academy; or as a midshipman at the U.S. Naval Academy, or the U.S. Merchant Marine Academy; or

(3) The registrant is a ROTC applicant who has been designated to participate in the next succeeding ROTC field training program prior to enrollment in the ROTC; or

(4) The registrant has been accepted as a ROTC scholarship student in the next succeeding ROTC program at a college or university.

(g) The Director of Selective Service shall issue to each registrant whose induction is postponed a written notice thereof.

(h) No registrant whose induction has been postponed shall be inducted into the Armed Forces during the period of any such postponement. A postponement of induction shall not render invalid the Order to Report for Induction which has been issued to the registrant, but shall operate only to postpone the reporting date, and the registrant shall report on the new date scheduled without having issued to him a new Order to Report for Induction.

(i) Any registrant receiving a postponement under the provisions of this section, shall, after the expiration of such postponement, be rescheduled to report for induction at the place to which he was originally ordered.

(j) The initial determination of claims for all postponements is made by area office compensated personnel. After a denial of a claim for a student postponement, the registrant may request the local board to consider the claim. Such registrant shall be afforded an opportunity to appeal before the board in accord with the procedures of §§ 1648.4 and 1648.5.

[47 FR 4648, Feb. 1, 1982, as amended at 52 FR 24455, July 1, 1987]

§ 1624.7 Expiration of deferment or exemption.

The Director shall issue an Order to Report for Induction to a registrant who is liable for induction whenever his deferment or exemption expires.

[52 FR 24455, July 1, 1987]

§ 1624.8 Transfer for induction.

The Director of Selective Service may direct that a registrant or registrants in a specified group of registrants be transferred for induction to such MEPS as he may designate.

§ 1624.9 Induction into the Armed Forces.

Registrants in classes 1–A and 1–A–0, who have been ordered for induction and found qualified under standards prescribed by the Secretary of Defense, will be inducted at the MEPS into the Armed Forces.

§ 1624.10 Order to report for examination.

(a) The Director of Selective Service may order any registrant in Class 1–A who has filed a claim for classification in a class other than Class 1–A or whose induction has been postponed, to report for an Armed Forces examination to determine acceptability for military service. The date specified to report for examination shall be at least 7 days after the date on which the Order to Report for Examination is issued. Such registrant will not be inducted until his claim for reclassification has been decided or abandoned.

(b) The reporting date for examination may be postponed for any reason a reporting date for induction may be postponed in accord with § 1624.6 (b), (d) or (f)(1).

(c) If a registrant fails to report for or complete an examination, the local board will determine that he has abandoned his claim.

(d) If a registrant is determined not acceptable for military service, he will be reclassified in Class 4–F.

(e) If a registrant is determined acceptable for military service, the processing of his claim will be completed.

[52 FR 24455, July 1, 1987]

PART 1627—VOLUNTEERS FOR INDUCTION

Sec.
1627.1 Who may volunteer.
1627.2 Registration of volunteers.
1627.3 Classification of volunteers.

AUTHORITY: Military Selective Service Act, 50 U.S.C. App 451 *et seq.*: E.O. 11623.

SOURCE: 47 FR 4650, Feb. 1, 1982, unless otherwise noted.

§ 1627.1 Who may volunteer.

Any registrant who has attained the age of 17 years, who has not attained the age of 26 years, and who has not completed his active duty obligation under the Military Selective Service Act, when inductions are authorized, may volunteer for induction into the Armed Forces unless he;

(a) Is classified in Class 4–F or is eligible for Class 4–F; or

(b) Has been found temporarily unacceptable with reexamination believed justified (RBJ) and the period of time specified for his return for examination has not been terminated and the basis for his temporary rejection continues to exist; or

(c) Is an alien who has not resided in the United States for a period of at least one year; or

(d) Has not attained the age of 18 years and does not have the consent of his parent or guardian for his induction.

§ 1627.2 Registration of volunteers.

(a) If a person who is required to be registered but who has failed to register volunteers for induction, he shall be registered.

(b) In registering a volunteer, the area office shall follow the procedure set forth in § 1615.3 of this chapter.

§ 1627.3 Classification of volunteers.

When a registrant who is eligible to volunteer files an Application for Voluntary Induction, he shall be classified in Class 1–A and processed for induction.

PART 1630—CLASSIFICATION RULES

Sec.

1630.2 Classes.
1630.10 Class 1-A: Available for unrestricted military service.
1630.11 Class 1-A-0: Conscientious objector available for noncombatant military service only.
1630.12 Class 1-C: Member of the Armed Forces of the United States, the National Oceanic and Atmospheric Administration or the Public Health Service.
1630.13 Class 1-D-D: Deferment for certain members of a reserve component or student taking military training.
1630.14 Class 1-D-E: Exemption of certain members of a reserve component or student taking military training.
1630.15 Class 1-H: Registrant not subject to processing for induction.
1630.16 Class 1-O: Conscientious objector to all military service.
1630.17 Class 1-O-S: Conscientious objector to all military service (separated).
1630.18 Class 1-W: Conscientious objector ordered to perform alternative service.
1630.26 Class 2-D: Registrant deferred because of study preparing for the ministry.
1630.30 Class 3-A: Registrant deferred because of hardship to dependents.
1630.31 Class 3-A-S: Registrant deferred because of hardship to dependents (separated).
1630.40 Class 4-A: Registrant who has completed military service.
1630.41 Class 4-B: Official deferred by law.
1630.42 Class 4-C: Alien or dual national.
1630.43 Class 4-D: Minister of religion.
1630.44 Class 4-F: Registrant not acceptable for military service.
1630.45 Class 4-G: Registrant exempted from service because of the death of his parent or sibling while serving in the Armed Forces or whose parent or sibling is in a captured or missing in action status.
1630.46 Class 4-T: Treaty alien.
1630.47 Class 4-W: Registrant who has completed alternative service in lieu of induction.
1630.48 Class 4-A-A: Registrant who has performed military service for a foreign nation.

AUTHORITY: Military Selective Service Act, 50 U.S.C. App. 451 *et seq.*, E.O. 11623.

SOURCE: 47 FR 4651, Feb. 1, 1982, unless otherwise noted.

§ 1630.2 Classes.

Each registrant shall be classified in one of the classes prescribed in this part.

§ 1630.10 Class 1-A: Available for unrestricted military service.

(a) All registrants available for unrestricted military service shall be in Class 1-A.

(b) All registrants in the selection groups as determined by the Director of Selective Service are available for unrestricted Military Service, except those determined by a classifying authority to be eligible for exemption or deferment from military service or for noncombatant or alternative service, or who have random sequence numbers (RSNs) determined by the Director not to be required to fill calls by the Secretary of Defense.

§ 1630.11 Class 1-A-0: Conscientious objector available for noncombatant military service only.

In accord with part 1636 of this chapter any registrant shall be palced in Class 1-A-0 who has been found, by reason of religious, ethical, or moral belief, to be conscientiously opposed to participation in combatant military tranining and service in the Armed Forces.

§ 1630.12 Class 1-C: Member of the Armed Forces of the United States, the National Oceanic and Atmospheric Administration or the Public Health Service.

In Class 1-C shall be placed:

(a) Every registrant who is or who becomes by enlistment or appointment, a commissioned officer, a warrant officer, a pay clerk, an enlisted man or an aviation cadet of the Regular Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the National Oceanic and Atmospheric Administration or the Public Health Service.

(b) Every registrant who is a cadet, United States Military Academy; or midshipman, United States Naval Academy; or a cadet, United States Air Force Academy; or cadet, United States Coast Guard Academy.

(c) Every registrant who by induction becomes a member of the Army of the United States, the United States Navy, the United States Marine Corps, the Air Force of the United States, or the United States Coast Guard.

(d) Exclusive of periods for training only, every registrant who is a member of a reserve component of the Armed Forces and is on active duty, and every member of the reserve of the Public Health Service on active duty and assigned to staff the various offices and bureaus of the Public Health Service including the National Institutes of Health, or assigned to the Coast Guard, the Bureau of Prisons of the Department of Justice, Environmental Protection Agency, or the National Oceanic and Atmospheric Administration or who are assigned to assist Indian tribes, groups, bands, or communities pursuant to the Act of August 5, 1954 (68 Stat. 674), as amended.

§ 1630.13 Class 1-D-D: Deferment for certain members of a reserve component or student taking military training.

In Class 1-D-D shall be placed any registrant who:

(a)(1) Has been selected for enrollment or continuance in the Senior (entire college level) Army Reserve Officer's Training Corps, or the Air Force Reserve Officer's Training Corps, or the Naval Reserve Officer's Training Corps, or the Naval and Marine Corps officer candidate program of the Navy, or the platoon leader's class of the Marine Corps, or the officer procurement programs of the Coast Guard and the Coast Guard Reserve, or is appointed an ensign, U.S. Naval Reserve while undergoing professional training; and

(2) Has agreed in writing to accept a commission, if tendered, and to serve subject to order of the Secretary of the military department having jurisdiction over him (or the Secretary of Transportation with respect to the U.S. Coast Guard), not less than 2 years on active duty after receipt of a commission; and

(3) Has agreed to remain a member of a regular or reserve component until the eighth anniversary of his receipt of a commission. Such registrant shall remain eligible for Class 1-D-D until completion or termination of the course of instruction and so long thereafter as he continues in a reserve status upon being commissioned except during any period he is eligible for Class 1-C under the provision of § 1630.12; or

(b) Is a fully qualified and accepted aviation cadet applicant of the Army, Navy, or Air Force, who has signed an agreement of service and is within such numbers as have been designated by the Secretary of Defense. Such registrant shall be retained in Class 1-D-D during the period covered by such agreement but in no case in excess of four months; or

(c) Is other than a registrant referred to in paragraph (a) or (d) of this section who:

(1) Prior to the issuance of orders for him to report for induction; or

(2) Prior to the date scheduled for his induction and pursuant to a proclamation by the Governor of a State to the effect that the authorized strength of any unit of the National Guard of that State cannot be maintained by the enlistment or appointment of persons who have not been issued orders to report for induction; or

(3) Prior to the date scheduled for his induction and pursuant to a determination by the President that the strength of the Ready Reserve of the Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve cannot be maintained by the enlistment or appointment of persons who have not been issued orders to report for induction:

enlists or accepts an appointment before attaining the age of 26 years, in the Ready Reserve of any Reserve component of the Armed Forces, the Army National Guard, or the Air National Guard. Such registrant shall remain eligible for Class 1-D-D so long as he serves satisfactorily as a member of an organized unit of such Ready Reserve or National Guard, or satisfactorily performs such other Ready Reserve service as may be prescribed by the Secretary of Defense, or serves satisfactorily as a member of the Ready Reserve of another reserve component, the Army National Guard, or the Air National Guard, as the case may be; or

(d) At any time has enlisted in the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve, or the Coast Guard Reserve and who thereafter has been commissioned therein upon graduation from an Officer's Candidate School of such Armed Force and has not has been ordered to active duty as a commissioned officer. Such registrant shall remain eligible for Class 1-D-D so long as he performs satisfactory service as a commissioned officer in an appropriate unit of the Ready Reserve, as determined under regulations prescribed by the Secretary of the department concerned; or

(e) Is serving satisfactorily as a member of a reserve component of the Armed Forces and is not eligible for Class 1-D-D under the provisions of any other paragraph of this section: *Provided:* That, for the purpose of this paragraph, a member of a reserve component who is in the Standby Reserve or the Retired Reserve shall be deemed to be serving satisfactorily unless the Armed Forces of which he is a member informs the Selective Service System that he is not serving satisfactorily.

[52 FR 24455, July 1, 1987]

§ 1630.14 Class 1-D-E: Exemption of certain members of a reserve component or student taking military training.

In Class 1-D-E shall be placed any registrant who:

(a) Is a student enrolled in an officer procurement program at a military college the curriculum of which is approved by the Secretary of Defense; or

(b) Has been enlisted in the Delayed Entry Program (DEP) at least ten days prior to his scheduled induction date; or

(c) Has been transferred to a reserve component of the Army, Navy, Air Force, Marine Corps or Coast Guard after a period of extended active duty, which was not for training only.

§ 1630.15 Class 1-H: Registrant not subject to processing for induction.

In Class 1-H shall be placed any registrant who is not eligible for Class 1-A and is not currently subject to processing for induction.

§ 1630.16 Class 1-O: Conscientious objector to all military service.

(a) Any registrant whose acceptability for military service has been satisfactorily determined and who, in accord with part 1636 of this chapter, has been found, by reason of religious, ethical, or moral belief, to be conscientiously opposed to participation in both combatant and noncombatant training and service in the Armed Forces shall be classified in Class 1-O.

(b) Upon the written request of the registrant filed with his claim for classification in Class 1-O, the local board will consider his claim for classification in Class 1-O before he is examined. If the local board determines that the registrant would qualify for Class 1-O if he were acceptable for military service, it will delay such classification until he is found acceptable for military service. Upon the written request of such registrant, he will be deemed acceptable for military service without examination only for the purpose of paragraph (a) of this section.

[52 FR 8891, Mar. 20, 1987; 52 FR 12641, Apr. 17, 1987]

§ 1630.17 Class 1-O-S: Conscientious objector to all military service (separated).

Any registrant who has been separated from the Armed Forces (including their reserve components) by reason of conscientious objection to participation in both combatant and noncombatant training and service in the Armed Forces shall be classified in Class 1-O-S unless his period of military service qualifies him for Class 4-A. A registrant in Class 1-O-S will be required to serve the remainder of his obligation under the Military Selective Service Act in Alternative Service.

[52 FR 8891, Mar. 20, 1987]

§ 1630.18 Class 1-W: Conscientious objector ordered to perform alternative service.

In Class 1-W shall be placed any registrant who has been ordered to perform alternative service contributing to the mainenance of the national health, safety, or interest.

[52 FR 24456, July 1, 1987]

§ 1630.26 Class 2-D: Registrant deferred because of study preparing for the ministry.

In accord with part 1639 of this chapter any registrant shall be placed in Class 2-D who has requested such deferment and:

(a) Who is preparing for the ministry under the direction of a recognized church or religious organization; and

(b) Who is satisfactorily pursuing a full-time course of instruction required for entrance into a recognized theological or divinity school in which he has been pre-enrolled; or

(c) Who is satisfactorily pursuing a full-time course of instruction in or at the direction of a recognized theological or divinity school; or

(d) Who having completed theological or divinity school is a student in a full-time graduate program or is a full-time intern. The registrant's studies must be related to and lead to entry into service as a regular or duly ordained minister of religion, and satisfactory progress in these studies as required by the school in which the registrant is enrolled must be maintained for continued eligibility for the deferment.

§ 1630.30 Class 3-A: Registrant deferred because of hardship to dependents.

(a) In accord with part 1642 of this chapter any registrant shall be classified in Class 3-A:

(1) Whose induction would result in extreme hardships to his wife when she alone is dependent upon him for support; or

(2) Whose deferment is advisable because his child(ren), parent(s), grrandparent(s), brother(s), or sister(s) is dependent upon him for support; or

(3) Whose deferment is advisable because his wife and his child(ren), parent(s), grandparent(s), brother(s), or sister(s) are dependent upon him for support.

(b) The classification of each registrant in Class 3-A will not be granted for a period longer than 365 days.

[52 FR 24456, July 1, 1987]

§ 1630.31 Class 3-A-S: Registrant deferred because of hardship to dependents (separated).

Any registrant who has been separated from active military service by reason of dependency or hardship shall be placed in Class 3-A-S unless his period of military service qualifies him for Class 4-A or 1-D-E. No registrant shall be retained in Class 3-A-S for more than six months.

[52 FR 24456, July 1, 1987]

§ 1630.40 Class 4-A: Registrant who has completed military service.

(a) In Class 4-A shall be placed any registrant other than a registrant eligible for classification in Class 1-C, 1-D-D, or 1-D-E who is within any of the following categories:

(1) A registrant who was discharged or transferred to a reserve component of the Armed Forces for the convenience of the Government after having served honorably on active duty for a period of not less than six months in the Army, the Navy, the Air Force, the Marine Corps, or the Coast Guard; or

(2) A registrant who has served honorably on active duty for a period of not less than one year in the Army, the Navy, the Air Force, the Marine Corps, or the Coast Guard; or

(3) A registrant who has served on active duty for a period of not less than twenty-four months as a commissioned officer in the National Oceanic and Atmospheric Administration or the Public Health Service, provided that such period of active duty in the Public Health Service as a commissioned Reserve Officer shall have been performed by the registrant while assigned to staff any of the various offices and bureaus of the Public Health Service including the National Institutes of Health, or while assigned to the Coast Guard, or the Bureau of Prisons of the Department of Justice, Environmental Protection Agency, or the National Oceanic and Atmospheric Administration, or who are assigned to assist Indian tribes, groups, bands or communities pursuant to the Act of August 5, 1954 (68 Stat. 674), as amended;

(4) [Reserved]

(5) A registrant who has completed six years of satisfactory service as a member of one or more of the Armed

Forces including the Reserve components thereof.

(b) For the purpose of computation of periods of active duty referred to in paragraphs (a) (1), (2), or (3) of this section, no credit shall be allowed for:

(1) Periods of active duty training performed as a member of a reserve component pursuant to an order or call to active duty solely for training purposes; or

(2) Periods of active duty in which the service consisted solely of training under the Army specialized training program, the Army Air Force college training program, or any similar program under the jurisdiction of the Navy, Marine Corps, or Coast Guard; or

(3) Periods of active duty as a cadet at the United States Military Academy, United States Air Force Academy, or United States Coast Guard Academy, or as a midshipman at the United States Naval Academy, or in a preparatory school after nomination as a principal, alternate, or candidate for admission to any such academies; or

(4) Periods of active duty in any of the Armed Forces while being processed for entry into or separation from any educational program or institute referred to in paragraph (b) (2) or (3) of this section; or

(5) Periods of active duty of members of the Reserve of the Public Health Service other than when assigned to staff any of the various offices and bureaus of the Public Health Service, including the National Institute of Health, or the Coast Guard or the Bureau of Prisons of the Department of Justice, Environmental Protection Agency, or the Environmental Science Services Administration, or who are assigned to assist Indian tribes, groups, bands, communities pursuant to the Act of August 5, 1954 (68 Stat. 674), as amended.

[47 FR 4651, Feb. 1, 1982, as amended at 52 FR 24456, July 1, 1987]

§ 1630.41 Class 4-B: Official deferred by law.

In Class 4-B shall be placed any registrant who is the Vice President of the United States, a governor of a State, Territory or possession, or any other official chosen by the voters of the entire State, Territory or Possession; a member of a legislative body of the United States or of a State, Territory or Possession; a judge of a court of record of the United States or of a State, Territory or Possession, or the District of Columbia.

§ 1630.42 Class 4-C: Alien or dual national.

In Class 4-C shall be placed any registrant who:

(a) Establishes that he is a national of the United States and of a country with which the United States has a treaty or agreement that provides that such person is exempt from liability for military service in the United States.

(b) Is an alien and who has departed from the United States prior to being issued an order to report for induction or alternative service that has not been canceled. If any registrant who is classified in Class 4-C pursuant to this paragraph returns to the United States he shall be classified anew.

(c) Is an alien and who has registered at a time when he was required by the Selective Service Law to present himself for and submit to registration and thereafter has acquired status within one of the groups of persons exempt from registration.

(d) Is an alien lawfully admitted for permanent residence as defined in paragraph (2) of section 101(a) of the Immigration and Nationality Act, as amended (66 Stat. 163, 8 U.S.C. 1101), and who by reason of occupational status is subject to adjustment to nonimmigrant status under paragraph (15)(A), (15)(E), or (15)(G) or section 101(a) but who executes a waiver in accordance with section 247(b) of that Act of all rights, privileges, exemptions, and immunities which would otherwise accrue to him as a result of that occupational status. A registrant placed in Class 4-C under the authority of this paragraph shall be retained in Class 4-C only for so long as such occupational status continues.

(e) Is an alien and who has not resided in the United States for one year, including any period of time before his registration. When such a registrant has been within the United States for two or more periods and the total of such period equals one year, he shall be deemed to have resided in the United

States for one year. In computing the length of such periods, any portion of one day shall be counted as a day.

§ 1630.43 Class 4-D: Minister of religion.

In accord with part 1645 of this chapter any registrant shall be placed in Class 4-D who is a:

(a) Duly ordained minister of religion; or

(b) Regular minister of religion.

§ 1630.44 Class 4-F: Registrant not acceptable for military service.

In Class 4-F shall be placed any registrant who is found by the Secretary of Defense, under applicable physical, mental or administrative standards, to be not acceptable for service in the Armed Forces; except that no such registrant whose further examination or re-examination is determined by the Secretary of Defense to be justified shall be placed in Class 4-F until such further examination has been accomplished and such registrant continues to be found not acceptable for military service.

[52 FR 24456, July 1, 1987]

§ 1630.45 Class 4-G: Registrant exempted from service because of the death of his parent or sibling while serving in the Armed Forces or whose parent or sibling is in a captured or missing in action status.

In Class 4-G shall be placed any registrant who, except during a period of war or national emergency declared by Congress, is:

(a) A surviving son or brother:

(1) Whose parent or sibling of the whole blood was killed in action or died in the line of duty while serving in the Armed Forces of the United States after December 31, 1959, or died subsequent to such date as a result of injuries received or disease incurred in the line of duty during such service; or

(2) Whose parent or sibling of the whole blood is in a captured or missing status as a result of such service in the Armed Forces during any period of time; or

(b) The sole surviving son of a family in which the father or one or more siblings were killed in action before January 1, 1960 while serving in the Armed Forces of the United States, or died after that date due to injuries received or disease incurred in the line of duty during such service before Janaury 1, 1960.

[47 FR 4651, Feb. 1, 1982, as amended at 52 FR 24456, July 1, 1987]

§ 1630.46 Class 4-T: Treaty alien.

In Class 4-T shall be placed any registrant who is an alien who established that he is exempt from military service under the terms of a treaty or international agreement between the United States and the country of which he is a national, and who has made application to be exempted from liability for training and service in the Armed Forces of the United States.

§ 1630.47 Class 4-W: Registrant who has completed alternative service in lieu of induction.

In Class 4-W shall be placed any registrant who subsequent to being ordered to perform alternative service in lieu of induction has been released from such service after satisfactorily performing the work for a period of 24 months, or has been granted an early release by the Director of Selective Service after completing at least 6 months of satisfactory service.

§ 1630.48 Class 4-A-A: Registrant who has performed military service for a foreign nation.

In Class 4-A-A shall be placed any registrant who, while an alien, has served on active duty for a period of not less than 12 months in the armed forces of a nation determined by the Department of State to be a nation with which the United States is associated in mutual defense activities and which grants exemptions from training and service in its armed forces to citizens of the United States who have served on active duty in the Armed Forces of the United States for a period of not less than 12 months; *Provided:* That all information which is submitted to the Selective Service System concerning the registrant's service in the armed forces of a foreign nation shall be written in the English language.

[52 FR 24456, July 1, 1987]

PART 1633—ADMINISTRATION OF CLASSIFICATION

Sec.
1633.1 Classifying authority.
1633.2 Claim for other than Class 1-A.
1633.3 Submission of claims.
1633.4 Information relating to claims for deferment or exemption.
1633.5 Securing information.
1633.6 Consideration of classes.
1633.7 General principles of classification.
1633.8 Basis of classification.
1633.9 Explanation of classification action.
1633.10 Notification to registrant of classification action.
1633.11 Assignment of registrant to a local board.
1633.12 Reconsideration of classification.

AUTHORITY: Military Selective Service Act, 50 U.S.C. App. 451 *et seq.;* E.O. 11623.

SOURCE: 47 FR 4654, Feb. 1, 1982, unless otherwise noted.

§ 1633.1 Classifying authority.

The following officials are authorized to classify registrants into the indicated classes established by part 1630 of this chapter:

(a) The Director of Selective Service may in accord with the provisions of this chapter classify a registrant into any class for which he is eligible except Classes 1-A-0, 1-0, 2-D, 3-A, and 4-D: *Provided,* That, the Director may not reclassify a registrant other than a volunteer for induction, into Class 1-A out of another class prior to the expiration of the registrant's entitlement to such classification. The Director may, before issuing an induction order to a registrant, appropriately classify him if the Secretary of Defense has certified him to be a member of an armed force or reserve component thereof.

(b) The National Selective Service Appeal Board may in accord with part 1653 of this chapter classify a registrant into any class for which he is eligible.

(c) A district appeal board may in accord with part 1651 of this chapter classify a registrant into any class for which he is eligible.

(d) A local board may in accord with part 1648 of this chapter classify a registrant into Class 1-A-0, 1-0, 2-D, 3-A, or 4-D for which he is eligible.

(e) A local board may also classify a registrant into Class 1-C, 1-D-D, 1-D-E, 1-O-S, 1-W, 3-A-S, 4-A, 4-A-A, 4-B, 4-C, 4-F, 4-G, 4-T or 4-W for which he is eligible upon request by the registrant for a review of a classification denial action under § 1633.1(f). No individual shall be classified into Class 4-F unless the Secretary of Defense has determined that he is unacceptable for military service.

(f) Compensated employees of an area office may in accord with § 1633.2 may classify a registrant into an administrative class for which he is eligible. No individual shall be classified into Class 4-F unless the Secretary of Defense has determined that he is unacceptable for military service.

[47 FR 4654, Feb. 1, 1982, as amended at 52 FR 24456, July 1, 1987]

§ 1633.2 Claim for other than Class 1-A.

(a) Any registrant who has received an order to report for induction may, prior to the day he is scheduled to report, submit to the Selective Service System a claim that he is eligible to be classified into any class other than Class 1-A. The registrant may assert a claim that he is eligible for more than one class other than Class 1-A. The registrant cannot subsequently file a claim with respect to a class for which he was eligible prior to the day he was originally scheduled to report. Information and documentation in support of claims for reclassification and postponement of induction shall be filed in accordance with instructions from the Selective Service System.

(b) Any registrant who has received an order to report for induction that has not been canceled may, at any time before his induction, submit a claim that he is eligible to be classified into any class other than Class 1-A based upon events over which he has no control that occurred on or after the day he was originally scheduled to report for induction.

(c)(1) Claims will be filed with the area office supporting the local board of jurisdiction.

(2) Claims will be considered by the local board identified in paragraph (c)(1) or its supporting area office as prescribed in this part.

(d) The initial determination of claims for all administrative classifications are made by area office compensated personnel. After a denial of a claim for an administrative classification the registrant may request the local board to consider the claim.

(e) The initial determination of a judgmental classification is made by a local board.

(f) A registrant may request and shall be granted a personal appearance whenever a local or appeal board considers his claim for reclassification. Personal appearances will be held in accord with parts 1648, 1651 and 1653 of this chapter.

(g) A registrant who has filed a claim for classification in Class 1-A-O or Class 1-0 shall be scheduled for a personal appearance in accord with § 1648.4 before his claim is considered.

(h) If granted, a deferment or exemption supersedes the original order to report for induction. When a deferment or exemption expires or ends, a new order to report for induction will be issued.

[52 FR 24457, July 1, 1987]

§ 1633.3 Submission of claims.

Except as otherwise expressly provided by the Director, no document relating to any registrant's claims or potential claims will be retained by the Selective Service System and no file relating to a registrant's possible classification status will be established prior to that registrant being ordered to report for induction.

§ 1633.4 Information relating to claims for deferment or exemption.

The registrant shall be entitled to present all relevant written information which he believes to be necessary to assist the classifying authority in determining his proper classification; such information may include documents, affidavits, and depositions. The affidavits and depositions shall be as concise and brief as possible.

§ 1633.5 Securing information.

The classifying authority is authorized to request and receive information whenever such information will assist in determining the proper classification of a registrant.

§ 1633.6 Consideration of classes.

Claims of a registrant will be considered in inverse order of the listing of the classes below. When grounds are established to place a registrant in one or more of the classes listed in the following table, the registrant shall be classified in the lowest class for which he is determined to be eligible, with Class 1-A-O considered the highest class and Class 1-H considered the lowest class, according to the following table:

Class 1-A-O: Conscientious Objector Available for Noncombatant Military Service Only.

Class 1-O: Conscientious Objector to all Military Service.

Class 1-O-S: Conscientious Objector to all Military Service (Separated).

Class 2-D: Registrant Deferred Because of Study Preparing for the Ministry.

Class 3-A: Registrant Deferred Because of Hardship to Dependents.

Class 3-A-S: Registrant Deferred Because of Hardship to Dependents (Separated).

Class 4-D: Minister of Religion.

Class 1-D-D: Deferment for Certain Members of a Reserve Component or Student Taking Military Training.

Class 4-B: Official Deferred by Law.

Class 4-C: Alien or Dual National.

Class 4-G: Registrant Exempted From Service Because of the Death of his Parent or Sibling While Serving in the Armed Forces or Whose Parent or Sibling is in a Captured or Missing in Action Status.

Class 4-A: Registrant Who Has Completed Military Service.

Class 4-A-A: Registrant Who Has Performed Military Service For a Foreign Nation.

Class 4-W: Registrant Who Has Completed Alternative Service in Lieu of Induction.

Class 1-D-E: Exemption of Certain Members of a Reserve Component or Student Taking Military Training.

Class 1-C: Member of the Armed Forces of the United States, the National Oceanic and Atmospheric Administration, or the Public Health Service.

Class 1-W: Conscientious Objector Ordered to Perform Alternative Service in Lieu of Induction.

Class 4-T: Treaty Alien.

Class 4-F-: Registrant Not Acceptable for Military Service.

Class 1-H: Registrant Not Subject to Processing for Induction.

[52 FR 24457, July 1, 1987]

§ 1633.7 General principles of classification.

(a) Each classified registrant in a selection group is available for unrestricted military service until his eligibility for noncombatant service, alternative service, or deferment or exemption from service has been determined by a classifying authority.

(b) The classifying authority in considering a registrant's claim for classification shall not discriminate for or against him because of his race, creed, color or ethnic background and shall not discriminate for or against him because of his membership or activity in any labor, political, religious, or other organization.

[47 FR 4654, Feb. 1, 1982, as amended at 52 FR 24457, July 1, 1987]

§ 1633.8 Basis of classification.

The registrant's classification shall be determined on the basis of the official forms of the Selective Service System and other written information in his file, oral statements, if made by the registrant at his personal appearance before the board, and oral statements, if made by the registrant's witnesses at his personal appearance. Any information in any written summary of the oral information presented at a registrant's personal appearance that was prepared by an official of the Selective Service System or by the registrant will be placed in the registrant's file. The file shall be subject to review by the registrant during normal business hours.

§ 1633.9 Explanation of classification action.

Whenever a classifying authority denies the request of a registrant for classification into a particular class or classifies a registrant in a class other than that which he requested, it shall record the reasons therefor in the registrant's file.

§ 1633.10 Notification to registrant of classification action.

The Director will notify the registrant of any classification action.

[52 FR 24457, July 1, 1987]

§ 1633.11 Assignment of registrant to a local board.

(a) A registrant is assigned to the local board that has jurisdiction over his permanent address that he last furnished the Selective Service System prior to the issuance of his induction order.

(b) The Director may change a registrant's assignment when he deems it necessary to assure the fair and equitable administration of the Selective Service Law.

[52 FR 24457, July 1, 1987]

§ 1633.12 Reconsideration of classification.

No classification is permanent. The Director of Selective Service may order the reconsideration of any classification action when the facts, upon which the classification is based, change or when he finds that the registrant made a misrepresentation of any material fact related to his claim for classification. No action may be taken under the preceding sentence of this paragraph unless the registrant is notified in writing of the impending action and the reasons thereof, and is given an opportunity to respond in writing within 10 days of the mailing of the notice. If the Director orders a reconsideration of a classification in accord with this paragraph, the claim will be treated in all respects as if it were the original claim for that classification.

PART 1636—CLASSIFICATION OF CONSCIENTIOUS OBJECTORS

Sec.

1636.1 Purpose; definitions.
1636.2 The claim of conscientious objection.
1636.3 Basis for classification in Class 1-A-0.
1636.4 Basis for classification in Class 1-0.
1636.5 Exclusion from Class 1-A-0 and Class 1-0.
1636.6 Analysis of belief.
1636.7 Impartiality.
1636.8 Considerations relevant to granting or denying a claim for classification as a conscientious objector.
1636.9 Types of decisions.
1636.10 Statement of reasons for denial.

AUTHORITY: Military Selective Service Act, 50 U.S.C. App. 451 *et seq.*; E.O. 11623.

SOURCE: 47 FR 4655, Feb. 1, 1982, unless otherwise noted.

§ 1636.1 Purpose; definitions.

(a) The provisions of this part govern the consideration of a claim by a registrant for classification in Class 1-A-0 (§ 1630.11 of this chapter), or Class 1-0 (§ 1630.17 of this chapter).

(b) The definitions of this paragraph shall apply in the interpretation of the provisions of this part:

(1) *Crystallization of a Registrant's Beliefs*. The registrant's becoming conscious of the fact that he is opposed to participation in war in any form.

(2) *Noncombatant Service*. Service in any unit of the Armed Forces which is unarmed at all times; any other military assignment not requiring the bearing of arms or the use of arms in combat or training in the use of arms.

(3) *Noncombatant Training*. Any training which is not concerned with the study, use, or handling of arms or other implements of warfare designed to destroy human life.

§ 1636.2 The claim of conscientious objection.

A claim to classification in Class 1-A-0 or Class 1-0, must be made by the registrant in writing. Claims and documents in support of claims may only be submitted after the registrant has received an order to report for induction or after the Director has made a specific request for submission of such documents. All claims or documents in support of claims received prior to a registrant being ordered to report for induction or prior to the Director's specific request for such documentation will be returned to the registrant and no file or record of such submission will be established.

§ 1636.3 Basis for classification in Class 1-A-0.

(a) A registrant must be conscientiously opposed to participation in combatant training and service in the Armed Forces.

(b) A registrant's objection may be founded on religious training and belief; it may be based on strictly religious beliefs, or on personal beliefs that are purely ethical or moral in source or content and occupy in the life of a registrant a place parallel to that filled by belief in a Supreme Being for those holding more traditionally religious views.

(c) A registrant's objection must be sincere.

[47 FR 4655, Feb. 1, 1982, as amended at 52 FR 24457, July 1, 1987]

§ 1636.4 Basis for classification in Class 1-0.

(a) A registrant must be conscientiously opposed to participation in war in any form and conscientiously opposed to participation in both combatant and noncombatant training and service in the Armed Forces.

(b) A registrant's objection may be founded on religious training and belief; it may be based on strictly religious beliefs, or on personal beliefs that are purely ethical or moral in source or centent and occupy in the life of a registrant a place parallel to that filled by belief in a Supreme Being for those holding more traditionally religious views.

(c) A registrant's objection must be sincere.

§ 1636.5 Exclusion from Class 1-A-0 and Class 1-0.

A registrant shall be excluded from Class 1-A-0 or Class 1-0:

(a) Who asserts beliefs which are of a religious, moral or ethical nature, but who is found not to be sincere in his assertions; or

(b) Whose stated objection to participation in war does not rest at all upon moral, ethical, or religious principle, but instead rests solely upon considerations of policy, pragmatism, expediency, or his own self-interest or well-being; or

(c) Whose objection to participation in war is directed against a particular war rather than against war in any form (a selective objection). If a registrant objects to war in any form, but also believes in a theocratic, spiritual war between the forces of good and evil, he may not by reason of that belief alone be considered a selective conscientious objector.

§ 1636.6 Analysis of belief.

(a) A registrant claiming conscientious objection is not required to be a

member of a *peace church* or any other church, religious organization, or religious sect to qualify for a 1-A-0 or 1-0 classification; nor is it necessary that he be affiliated with any particular group opposed to participation in war in any form.

(b) The registrant who identifies his beliefs with those of a traditional church or religious organization must show that he basically adheres to beliefs of that church or religious organization whether or not he is actually affiliated with the institution whose teachings he claims as the basis of his conscientious objection. He need not adhere to *all* beliefs of that church or religious organization.

(c) A registrant whose beliefs are not religious in the traditional sense, but are based primarily on moral or ethical principle should hold such beliefs with the same strength or conviction as the belief in a Supreme Being is held by a person who is religious in the traditional sense. Beliefs may be mixed; they may be a combination of traditional religious beliefs and nontraditional religious, moral or ethical beliefs. The registrant's beliefs must play a significant role in his life but should be evaluated only insofar as they pertain to his stated objection to his participation in war.

(d) Where the registrant is or has been a member of a church, religious organization, or religious sect, and where his claim of a conscientious objection is related to such membership, the board may properly inquire as to the registrant's membership, the religious teachings of the church, religious organization, or religious sect, and the registrant's religious activity, insofar as each relates to his objection to participation in war. The fact that the registrant may disagree with or not subscribe to some of the tenets of his church or religious sect does not necessarily discredit his claim.

(e)(1) The history of the process by which the registrant acquired his beliefs, whether founded on religious, moral, or ethical principle is relevant to the determination whether his stated opposition to participation in war in any form is sincere.

(2) The registrant must demonstrate that his religious, ethical, or moral convictions were acquired through training, study, contemplation, or other activity comparable to the processes by which traditional religious convictions are formulated. He must show that these religious, moral, or ethical convictions, once acquired, have directed his life in the way traditional religious convictions of equal strength, depth, and duration have directed the lives of those whose beliefs are clearly founded in traditional religious conviction.

(f) The registrant need not use formal or traditional language in describing the religious, moral, or ethical nature of his beliefs. Board members are not free to reject beliefs because they find them incomprehensible or inconsistent with their own beliefs.

(g) Conscientious objection to participation in war in any form, if based on moral, ethical, or religious beliefs, may not be deemed disqualifying simply because those beliefs may influence the registrant concerning the Nation's domestic or foreign policy.

[47 FR 4655, Feb. 1, 1982, as amended at 52 FR 24457, July 1, 1987]

§ 1636.7 Impartiality.

Boards may not give preferential treatment to one religion over another, and all beliefs whether of a religious, ethical, or moral nature are to be given equal consideration.

§ 1636.8 Considerations relevant to granting or denying a claim for classification as a conscientious objector.

(a) After the registrant has submitted a claim for classification as a conscientious objector and his file is complete, a determination of his sincerity will be made based on:

(1) All documents in the registrant's file folder; and

(2) The oral statements of the registrant at his personal appearance(s) before the local and/or appeal board; and

(3) The oral statements of the registrant's witnesses, if any, at his personal appearance(s) before the local board; and

(4) The registrant's general demeanor during his personal appearance(s).

(b) The registrant's stated convictions should be a matter of conscience.

(c) The board should be convinced that the registrant's personal history since the crystallization of his conscientious objection is not inconsistent with his claim and demonstrates that the registrant's objection is not solely a matter of expediency. A recent crystallization of beliefs does not in itself indicate expediency.

(d) The information presented by the registrant should reflect a pattern of behavior in response to war and weapons which is consistent with his stated beliefs. Instances of violent acts or conviction for crimes of violence, or employment in the development or manufacturing of weapons of war, if the claim is based upon or supported by a life of nonviolence, may be indicative of inconsistent conduct.

(e) The development of a registrant's opposition to war in any form may bear on his sincerity. If the registrant claims a recent crystallization of beliefs, his claim should be supported by evidence of a religious or educational experience, a traumatic event, an historical occasion, or some other special situation which explains when and how his objection to participation in war crystallized.

(f) In the event that a registrant has previously worked in the development of or manufacturing of weapons of war or has served as a member of a military reserve unit, it should be determined whether such activity was prior to the stated crystallization of the registrant's conscientious objector beliefs. Inconsistent conduct prior to the actual crystallization of conscientious objector beliefs is not necessarily indicative of insincerity. But, inconsistent conduct subsequent to such crystallization may indicate that registrant's stated objection is not sincere.

(g) A registrant's behavior during his personal appearance before a board may be relevant to the sincerity of his claim.

(1) Evasive answers to questions by board members or the use of hostile, belligerent, or threatening words or actions, for example, may in proper circumstances be deemed inconsistent with a claim in which the registrant bases his objection on a belief in nonviolence.

(2) Care should be exercised that nervous, frightened, or apprehensive behavior at the personal appearance is not misconstrued as a reflection of insincerity.

(h) Oral response to questions posed by board members should be consistent with the written statements of the registrant and should generally substantiate the submitted information in the registrant's file folder; any inconsistent material should be explained by the registrant. It is important to recognize that the registrant need not be eloquent in his answers. But, a clear inconsistency between the registrant's oral remarks at his personal appearance and his written submission to the board may be adequate grounds, if not satisfactorily explained, for concluding that his claim is insincere.

(i) The registrant may submit letters of reference and other supporting statements of friends, relatives and acquaintances to corroborate the sincerity of his claim, although such supplemental documentation is not essential to approval of his claim. A finding of insincerity based on these letters or supporting statements must be carefully explained in the board's decision, specific mention being made of the particular material relied upon for denial of classification in Class 1-A-0 or Class 1-0.

[47 FR 4655, Feb. 1, 1982, as amended at 52 FR 24457, July 1, 1987; 60 FR 13908, Mar. 15, 1995]

§ 1636.9 Types of decisions.

The following are the types of decisions which may be made by a board when a claim for classification in Class 1-A-0 or Class 1-0 has been considered.

(a) Decision to grant a claim for classification in Class 1-A-0 or Class 1-0, as requested, based on a determination that the truth or sincerity of the registrant's claim is not refuted by any information contained in the registrant's file or obtained during his personal appearance.

(b) Decision to deny a claim for classification in Class 1-A-0 or Class 1-0 based on all information before the board, and a finding that such information fails to meet the tests specified in

§ 1636.3 or 1636.4 of this part. If supported by information contained in the registrant's file or obtained during his personal appearance the board may find that the facts presented by the registrant in support of his claim are untrue.

[47 FR 4655, Feb. 1, 1982, as amended at 53 FR 25328, July 6, 1988]

§ 1636.10 Statement of reasons for denial.

(a) Denial of a conscientious objector claim by a board must be accompanied by a statement specifying the reason(s) for such denial as prescribed in §§ 1633.9, 1651.4 and 1653.3 of this chapter. The reason(s) must, in turn, be supported by evidence in the registrant's file.

(b) If a board's denial is based on statements by the registrant or on a determination that the claim is inconsistent or insincere, this should be fully explained in the statement of reasons accompanying the denial.

PART 1639—CLASSIFICATION OF REGISTRANTS PREPARING FOR THE MINISTRY

Sec.

1639.1 Purpose; definitions.
1639.2 The claim for Class 2-D.
1639.3 Basis for classification in Class 2-D.
1639.4 Exclusion from Class 2-D.
1639.5 Impartiality.
1639.6 Considerations relevant to granting or denying claims for Class 2-D.
1639.7 Types of decisions.
1639.8 Statement of reason for denial.

AUTHORITY: Military Selective Service Act, 50 U.S.C. App. 451 *et seq.*; E.O. 11623.

SOURCE: 47 FR 4657, Feb. 1, 1982, unless otherwise noted.

§ 1639.1 Purpose; definitions.

(a) The provisions of this part shall govern the consideration of a claim by a registrant for classification in Class 2-D (§ 1630.26 of this chapter).

(b) The definitions of this paragraph shall apply to the interpretation of the provisions of this part:

(1) The term *ministry* refers to the vocation of a *duly ordained minister of religion* or *regular minister of religion* as defined in part 1645 of this chapter.

(2) The term *recognized church or religious organization* refers to a church or religious organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, and which engages primarily in religious activities.

(3) The term *recognized theological or divinity school* refers to a theological or divinity school whose graduates are acceptable for ministerial duties either as an ordained or regular minister by the church or religious organization sponsoring a registrant as a ministerial student.

(4) The term *graduate program* refers to a program in which the registrant's studies are officially approved by his church or religious organization for entry into service as a regular or duly ordained minister of religion.

(5) The term *full-time intern* applies to a program that must run simultaneous with or immediately follow the completion of the theological or divinity training and is required by a recognized church or religious organization for entry into the ministry.

(6) The term *satisfactorily pursuing a full-time course of instruction* means maintaining a satisfactory academic record as determined by the institution while receiving full-time instructions in a structured learning situation. A full-time course of instruction does not include instructions received pursuant to a mail order program.

§ 1639.2 The claim for Class 2-D.

A claim to classification in Class 2-D must be made by the registrant in writing, such document being placed in his file folder.

§ 1639.3 Basis for classification in Class 2-D.

(a) In Class 2-D shall be placed any registrant who is preparing for the ministry under the direction of a recognized church or religious organization; and

(1) Who is satisfactorily pursuing a full-time course of instruction required for entrance into a recognized theological or divinity school in which he has been pre-enrolled or accepted for admission; or

(2) Who is satisfactorily pursuing a full-time course of instruction in a recognized theological or divinity school; or

(3) Who, having completed theological or divinity school, is a student in a full-time graduate program or is a full-time intern, and whose studies are related to and lead toward entry into service as a regular or duly ordained minister of religion. Satisfactory progress in these studies as determined by the school in which the registrant is enrolled, must be maintained for qualification for the deferment.

(b) The registrant's classification shall be determined on the basis of the written information in his file folder, oral statements, if made by the registrant at his personal appearance before a board, and oral statements, if made by the registrant's witnesses at his personal appearance.

[47 FR 4657, Feb. 1, 1982, as amended at 52 FR 24458, July 1, 1987]

§ 1639.4 Exclusion from Class 2-D.

A registrant shall be excluded from Class 2-D when:

(a) He fails to establish that the theological or divinity school is a recognized school; or

(b) He fails to establish that the church or religious organization which is sponsoring him is so recognized; or

(c) He ceases to be a full-time student; or

(d) He fails to maintain satisfactory academic progress.

§ 1639.5 Impartiality.

Boards may not give precedence to any religious organization or school over another, and all are to be given equal consideration.

§ 1639.6 Considerations relevant to granting or denying claims for Class 2-D.

(a) The registrant's claim for Class 2-D must include the following:

(1) A statement from a church or religious organization that the registrant is preparing for the ministry under its direction; and

(2) Current certification to the effect that the registrant is satisfactorily pursuing a full-time course of instruction required for entrance into a recognized theological or divinity school in which he has been pre-enrolled; or

(3) Current certification to the effect that the registrant is satisfactorily pursuing a full-time course of instruction in a recognized theological or divinity school; or

(4) Current certification to the effect that the registrant, having completed theological or divinity school, is satisfactorily pursuing a full-time graduate program or is a full-time intern, whose studies are related to and lead toward entry into service as a regular or duly ordained minister of religion.

(b) A board may require the registrant to obtain from the church, religious organization, or school detailed information in order to determine whether or not the theological or divinity school is in fact a recognized school or whether or not the church or religious organization which is sponsoring the registrant is recognized.

[47 FR 4657, Feb. 1, 1982, as amended at 52 FR 24458, July 1, 1987]

§ 1639.7 Types of decisions.

(a) A board may grant a classification into Class 2-D until the end of the academic school year.

(b) Upon the expiration of a 2-D classification, a board shall review any request for extension of the classification in the same manner as the first request for Class 2-D. This section does not relieve a registrant of his duties under § 1621.1 of this chapter.

(c) The board may deny a claim for Class 2-D when the evidence fails to merit any of the criteria established in this section.

[47 FR 4657, Feb. 1, 1982, as amended at 52 FR 24458, July 1, 1987]

§ 1639.8 Statement of reason for denial.

(a) Denial of a claim for a ministerial student deferment by a board must be accompanied by a statement specifying the reason(s) for such denial as prescribed in §§ 1633.9, 1651.4 and 1653.3 of this chapter. The reason(s) must in turn, be supported by evidence in the registrant's file.

(b) If a board's denial is based on statements by the registrant or his witnesses at a personal appearance, this must be fully explained in the statement of reasons accompanying the denial.

PART 1642—CLASSIFICATION OF REGISTRANTS DEFERRED BECAUSE OF HARDSHIP TO DEPENDENTS

Sec.
1642.1 Purpose; definitions.
1642.2 The claim for classification in Class 3-A.
1642.3 Basis for classification in Class 3-A.
1642.4 Ineligibility for Class 3-A.
1642.5 Impartiality.
1642.6 Considerations relevant to granting or denying claims for Class 3-A.
1642.7 Types of decisions.
1642.8 Statement of reason for denial.

AUTHORITY: Military Selective Service Act, 50 U.S.C. App. 451 *et seq*. E.O. 11623.

SOURCE: 47 FR 4658, Feb. 1, 1982, unless otherwise noted.

§ 1642.1 Purpose; definitions.

(a) The provisions of this part govern the consideration of a claim by a registrant for classification in Class 3-A (§ 1630.30 of this chapter).

(b) The following definitions apply to the interpretation of the provisions of this part.

(1) The term *dependent* shall apply to the wife, child, parent, grandparent, brother or sister of a registrant.

(2) The term *child* includes an unborn child, a stepchild, a foster child or a legally adopted child, who is legitimate or illegitimate, but shall not include any person 18 years of age or older unless he or she is physically or mentally handicapped.

(3) The term *parent* shall include any person who has stood in the place of a parent to the registrant for at least 5 years preceding the 18th anniversary of the registrant's date of birth and is now supported in good faith by the registrant.

(4) The term *brother* or *sister* shall include a person having one or both parents in common with the registrant, who is either under 18 years of age or is physically or mentally handicapped.

(5) The term *support* includes but is not limited to financial assistance.

(6) Hardship is the unreasonable deprivation of a dependent of the financial assistance, personal care or companionship furnished by the registrant when that deprivation would be caused by the registrant's induction.

§ 1642.2 The claim for classification in Class 3-A.

A claim for classification in Class 3-A must be made by the registrant in writing. Prior to the consideration of the claim, the registrant shall submit supporting documentation, such documents being placed in his file folder.

§ 1642.3 Basis for classification in Class 3-A.

(a) In Class 3-A shall be placed any registrant:

(1) Whose induction would result in extreme hardship to his wife when she alone is dependent upon him for support; or

(2) Whose deferment is advisable because his child(ren), parent(s), grandparent(s), brother(s), or sister(s) is dependent upon him for support; or

(3) Whose deferment is advisable because his wife and child(ren), parent(s), grandparent(s), brother(s), or sister(s) are dependent upon him for support.

(b) In its consideration of a claim by a registrant for classification in Class 3-A, the board will first determine whether the registrant's wife, child(ren), parent(s), grandparent(s), brother(s), or sister(s) is dependent upon the registrant for support. Support may be financial assistance, personal care or companionship. If financial assistance is the basis of support, the registrant's contribution must be a substantial portion of the necessities of the dependent. Under most circumstances 40 to 50% of the cost of the necessities may be considered substantial. If that determination is affirmative, the board will determine whether the registrant's induction would result in extreme hardship to his wife when she is the only dependent, or whether the registrant's deferment is advisable because his child(ren), parent(s), grandparent(s), brother(s), or sister(s) is dependent upon him for support, or because his wife and his child(ren), parent(s), grandparent(s), brother(s), or sister(s) are dependent upon him for support. A deferment is advisable whenever the registrant's induction would result in hardship to his dependents.

(c) The registrant's classification shall be determined on the basis of the written information in his file, oral

statements, if made by the registrant at his personal appearance before a board, and oral statements, if made by the registrant's witnesses at his personal appearances.

[52 FR 24458, July 1, 1987]

§ 1642.4 Ineligibility for Class 3-A.

(a) A registrant is ineligible for Class 3-A when:

(1) He assumed an obligation to his dependents specifically for the purpose of evading training and service; or

(2) He acquired excessive financial obligations primarily to establish his dependency claim; or

(3) His dependents would not be deprived of reasonable support if the registrant is inducted; or

(4) There are other persons willing and able to assume the support of his dependents; or

(5) The dependents would suffer only normal anguish of separation from the registrant if he is inducted; or

(6) The hardship to a dependent is based solely on financial conditions and can be removed by payment and allowances which are payable by the United States to the dependents of persons who are serving in the Armed Forces; or

(7) The hardship to the dependent is based upon considerations that can be eliminated by payments and allowances which are payable by the United States to the dependents of persons who are serving in the Armed Forces.

(b) [Reserved]

[47 FR 4658, Feb. 1, 1982, as amended at 52 FR 24458, July 1, 1987]

§ 1642.5 Impartiality.

(a) Boards shall consider all questions in a claim for classification in Class 3-A with equal consideration of race, creed, color, sex or ethnic background.

(b) Boards may not give precedence to one type of dependency hardship over another.

[52 FR 24458, July 1, 1987]

§ 1642.6 Considerations relevant to granting or denying claims for Class 3-A.

(a) The registrant's claim for Class 3-A must include the following, with documentation, as applicable:

(1) Registrant's and his dependent's marital status;

(2) Physician's statement concerning any dependent who is physically or mentally handicapped;

(3) Employment status of registrant and his dependents; and

(b) Each case must be weighed carefully and decided on its own merits.

§ 1642.7 Types of decisions.

(a) A board may grant a classification into Class 3-A for such period of time it deems appropriate but in no event the period exceed one year.

(b) Upon the expiration of a 3-A classification a board shall review any request for an extension of the classification as if it were the first request for that classification, and the fact that the registrant was placed in Class 3-A under apparently similar circumstances will not be a factor in the decision of the board. This section does not relieve a registrant from his duties under § 1621.1 of this chapter.

(c) [Reserved]

(d) A board shall deny a claim for Class 3-A when the evidence fails to meet the criteria established in this part.

[47 FR 4658, Feb. 1, 1982, as amended at 52 FR 24458, July 1, 1987]

§ 1642.8 Statement of reason for denial.

(a) Denial of a claim for Class 3-A by a board must be accompanied by a statement specifying the reason(s) for such denial as prescribed in §§ 1633.9, 1651.4 and 1653.3 of this chapter. The reason must in turn, be supported by evidence in the registrant's file.

(b) If a board's denial is based on statements by the registrant or his witnesses at a personal appearance, this must be fully explained in the statement of reasons accompanying the denial.

PART 1645—CLASSIFICATION OF MINISTERS OF RELIGION

Sec.
1645.1 Purpose; definitions.
1645.2 The claim for minister of religion classification.
1645.3 Basis for classification in Class 4-D.
1645.4 Exclusion from Class 4-D.
1645.5 Impartiality.
1645.6 Considerations relevant to granting or denying a claim for Class 4-D.
1645.7 Evaluation of claim.
1645.8 Types of decisions.
1645.9 Statement of reason for denial.

AUTHORITY: Military Selective Service Act, 50 U.S.C. App. 451 *et seq.*; E.O. 11623.

SOURCE: 47 FR 4660, Feb. 1, 1982, unless otherwise noted.

§ 1645.1 Purpose; definitions.

(a) The provisions of this part govern the consideration of a claim by a registrant for classification in Class 4-D (§ 1630.43 of this chapter).

(b) The definitions of this paragraph shall apply in the interpretation of the provisions of this part:

(1) The term *duly ordained minister of religion* means a person:

(i) Who has been ordained in accordance with the ceremonial ritual or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character; and

(ii) Who preaches and teaches the doctrines of such church, sect, or organization; and

(iii) Who administers the rites and ceremonies thereof in public worship; and

(iv) Who, as his regular and customary vocation, preaches and teaches the principles of religion; and

(v) Who administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.

(2) The term *regular minister of religion* means one who as his customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister.

(3) The term *regular or duly ordained minister of religion* does not include:

(i) A person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization; or

(ii) Any person who has been duly ordained a minister in accordance with the ceremonial rite or discipline of a church, religious sect or organization, but who does not regularly, as a bona fide vocation, teach and preach the principles of religion and administer the ordinances of public worship, as embodied in the creed or principles of his church, sect, or organization.

(4) The term *vocation* denotes one's regular calling or full-time profession.

§ 1645.2 The claim for minister of religion classification.

A claim to classification in Class 4-D must be made by the registrant in writing, such document being placed in his file folder.

§ 1645.3 Basis for classification in Class 4-D.

In accordance with part 1630 of this chapter any registrant shall be placed in Class 4-D who is a:

(a) Duly ordained minister of religion; or

(b) Regular minister of religion.

§ 1645.4 Exclusion from Class 4-D.

A registrant is excluded from Class 4-D when his claim clearly shows that:

(a) He is not a regular minister or a duly ordained minister; or

(b) He is a duly ordained minister of religion in accordance with the ceremonial rite or discipline of a church, religious sect or organization, but who does not regularly as his bona fide vocation, teach and preach the principles of religion and administer the ordinances of public worship, as embodied in the creed or principles of his church, sect, or organization; or

(c) He is a regular minister of religion, but does not regularly, as his bona fide vocation, teach and preach the principles of religion; or

(d) He is not recognized by the church, sect, or organization as a regular minister of religion; or

(e) He is a duly ordained minister of religion but does not administer the ordinances of public worship, as embodied in the creed of his church, sect, or organization.

§ 1645.5 Impartiality.

Boards may not give preferential treatment to one religion or sect over another and no preferential treatment will be given a duly ordained minister over a regular minister.

§ 1645.6 Considerations relevant to granting or denying a claim for Class 4-D.

(a) The board shall first determine whether the registrant is requesting classification in Class 4-D because he is a regular minister of religion or because he is a duly ordained minister of religion.

(b) If the registrant claims to be a duly ordained minister of religion, the board will:

(1) Determine whether the registrant has been ordained, in accordance with the ceremonial ritual or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of religious character, to preach and teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship; and

(2) Determine whether the registrant as his regular, customary, and bona fide vocation, preaches and teaches the principles of religion and administers the ordinances of public worship, as embodied in the creed or principles of the church, sect, or organization by which the registrant was ordained.

(c) If the registrant claims to be a regular minister of religion, the board will:

(1) Determine whether the registrant as his customary and regular calling or customary and regular full-time profession, preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion; and

(2) Determine whether the registrant is recognized by such church, sect, or organization as a regular minister.

(d) If the board determines that the registrant is a regular minister of religion or duly ordained minister of religion he shall be classified in Class 4-D.

§ 1645.7 Evaluation of claim.

(a) In evaluating a claim for classification in Class 4-D, the board will not consider:

(1) The training or abilities of the registrant for duty as a minister; or

(2) The motive or sincerity of the registrant in serving as a minister.

(b) The board should be careful to ascertain the actual duties and functions of registrants seeking classification in Class 4-D, such classification being appropriate only for leaders of the various religious groups, not granted to members of such groups generally.

(c) Preaching and teaching the principles of one's sect, if performed part-time or half-time, occasionally or irregularly, are insufficient to establish eligiblity for Class 4-D. These activities must be regularly performed and must comprise the registrant's regular calling or full-time profession. The mere fact of some secular employment on the part of a registrant requesting classification in Class 4-D does not in itself make him ineligible for that class.

(d) The board should request the registrant to furnish any additional information that it believes will be of assistance in the consideration of the registrant's claim for classification in Class 4-D.

§ 1645.8 Types of decisions.

(a) If the board determines that the registrant is a regular minister of religion or a duly ordained minister of religion, he shall be classified in Class 4-D.

(b) The board will deny a claim for Class 4-D when the evidence fails to meet the criteria established in this part.

§ 1645.9 Statement of reason for denial.

(a) Denial of a 4-D claim by a board must be accompanied by a statement specifying the reason(s) for such denial as prescribed in §§1633.9, 1651.4 and 1653.3 of this chapter. The reason(s)

must in turn, be supported by evidence in the registrant's file.

(b) If the board's denial is based on statements by the registrant or his witnesses at a personal appearance or on documentation in the registrant's file, such basis will be fully explained in the statement of reasons accompanying the denial.

PART 1648—CLASSIFICATION BY LOCAL BOARD

Sec.

1648.1 Authority of local board.
1648.3 Opportunity for personal appearances.
1648.4 Appointment for personal appearances.
1648.5 Procedures during personal appearance before the local board.
1648.6 Registrants transferred for classification.
1648.7 Procedures upon transfer for classification.

AUTHORITY: Military Selective Service Act, 50 U.S.C. App. 451 *et seq.*; E.O. 11623.

§ 1648.1 Authority of local board.

A local board shall consider and determine all claims which it receives in accord with § 1633.2 or § 1648.6 of this chapter. No action shall be taken by the board in the absence of a quorum of its prescribed membership.

[52 FR 24458, July 1, 1987]

§ 1648.3 Opportunity for personal appearances.

(a) A registrant who has filed a claim for classification in Class 1-A-O or Class 1-O shall be scheduled for a personal appearance in accord with § 1648.4 before his claim is considered.

(b) A registrant who has filed a claim for classification in Class 2-D, Class 3-A, or Class 4-D, shall, upon his written request, be afforded an opportunity to appear in person before the board before his claim for classification is considered.

(c) Any registrant who has filed a claim for classification in an administrative class and whose claim has been denied, shall be afforded an opportunity to appear before the board if he requests that the denial of such claim be reviewed by the board.

[47 FR 4661, Feb. 1, 1982, as amended at 52 FR 24458, July 1, 1987]

§ 1648.4 Appointment for personal appearances.

(a) Not less than 10 days (unless the registrant requests an earlier appointment) in advance of the meeting at which he may appear, the registrant shall be informed of the time and place of such meeting and that he may present evidence, including witnesses, bearing on his classification.

(b) Should the registrant who has filed a claim for classification in Class 1-A-O or Class 1-O fail to appear at his scheduled personal appearance, the board will not consider his claim for classification in Class 1-A-O or Class 1-O. The board shall consider any written explanation of such failure that has been filed within 5 days (or extension thereof granted by the board) after such failure to appear. It the board determines that the registrant's failure to appear was for good cause it shall reschedule the registrant's personal appearance. If the board does not receive a timely written explanation of the registrant's failure to appear for his scheduled personal appearance or if the board determines that the registrant's failure to appear was not for good cause, the registrant will be deemed to have abandoned his claim for Class 1-A-O or 1-O and will be notified that his claim will not be considered. The board will notify the registrant in writing of its action under this paragraph.

(c) Whenever a registrant who has filed a claim for a class other than Class 1-A-0 or Class 1-0 for whom a personal appearance has been scheduled, fails to appear in accord with such schedule, the board shall consider any written explanation of such failure that has been filed within 5 days (or extension thereof granted by the board) after such failure to appear. If the board determines that the registrant's failure to appear was for good cause it shall reschedule the registrant's personal appearance. If the board does not receive a timely written explanation of the registrant's failure to appear for his scheduled personal appearance or if

the board determines that the registrant's failure to appear was not for good cause, the registrant will be deemed to have abandoned his request for personal appearance and the board will proceed to classify him on the basis of the material in his file. The board will notify the registrant in writing of its action under this paragraph.

[47 FR 4661, Feb. 1, 1982, as amended at 52 FR 24458, July 1, 1987]

§ 1648.5 Procedures during personal appearance before the local board.

(a) A quorum of the prescribed membership of a board shall be present during all personal appearances. Only those members of the board before whom the registrant appears shall classify him.

(b) At any such appearance, the registrant may present evidence, including witnesses; discuss his classification; direct attention to any information in his file; and present such further information as he believes will assist the board in determing his proper classification. The information furnished should be as concise as possible.

(c) The registrant may present the testimony of not more than three witnesses unless it is the judgment of the board that the testimony of additional witnesses is warranted. The registrant may summarize in writing, the oral information that he or his witnesses presented. Such summary shall be placed in the registrant's file.

(d) A summary will be made of all oral testimony given by the registrant and his witnesses at his personal appearance and such summary shall be placed in the registrant's file.

(e) If the registrant does not speak English adequately he may appear with a person to act as interpreter for him. The interpreter shall be sworn in accordance with § 1605.81(b). Such interpreter will not be deemed to be a witness unless he testifies in behalf of the registrant.

(f) During the personal appearance only the registrant or his witnesses may address the board or respond to questions of the board and only the registrant and the board will be allowed to address questions to witnesses. A registrant may, however, be accompanied by an advisor of his choosing and may confer with the advisor before responding to an inquiry or statement by the board: *Provided*, That, those conferences do not substantially interfere with or unreasonably delay the orderly process of the personal appearance.

(g) If, in the opinion of the board, the informal, administrative nature of the personal appearance is unduly disrupted by the presence of an advisor, the board chairman may require the advisor to leave the hearing room. In such case, the board chairman shall put a statement of reasons for his action in the registrant's file.

(h) The making of verbatim transcripts, and the using of cameras or other recording devices are prohibited in proceedings before the board. This does not prevent the registrant or Selective Service from making a written summary of all testimony presented.

(i) Proceedings before the local boards shall be open to the public only upon the request of or with the permission of the registrant. The board chairman may limit the number of persons attending the hearing in order to maintain order. If during the hearing the presence on nonparticipants in the proceeding becomes disruptive, the chairman may close the hearing.

[47 FR 4661, Feb. 1, 1982, as amended at 52 FR 24459, July 1, 1987]

§ 1648.6 Registrants transferred for classification.

(a) Before a board of jurisdiction has undertaken the classification of a registrant, the file may, at his request, be transferred for classification to a local board nearer to his current address than is the local board of jurisdiction.

(b) The Director of Selective Service may transfer a registrant to another board for classification at any time when:

(1) A board cannot act on the registrant's claim because of disqualification under the provisions of § 1605.55 of this chapter; or

(2) He deems such transfer to be necessary in order to assure equitable administration of the Selective Service Law.

[47 FR 4661, Feb. 1, 1982, as amended at 52 FR 24459, July 1, 1987]

§ 1648.7 Procedures upon transfer for classification.

A board to which a registrant is transferred for classification shall classify the registrant in the same manner it would classify a registrant assigned to it. When the classification has been decided by the transfer board, the file will be returned to the local board of jurisdiction in the manner prescribed by the Director.

[47 FR 4661, Feb. 1, 1982]

PART 1651—CLASSIFICATION BY DISTRICT APPEAL BOARD

Sec.

1651.1 Who may appeal to a district appeal board.
1651.2 Time within which registrants may appeal.
1651.3 Procedures for taking an appeal.
1651.4 Review by district appeal board.
1651.5 File to be returned after appeal to the district appeal board is decided.

AUTHORITY: Military Selective Service Act, 50 U.S.C. App. 451 *et seq*. E.O. 11623.

SOURCE: 47 FR 4662, Feb. 1, 1982, unless otherwise noted.

§ 1651.1 Who may appeal to a district appeal board.

(a) The Director of Selective Service may appeal from any determination of a local board when he deems it necessary to assure the fair and equitable administration of the Selective Service Law: *Provided*, That, no such appeal will be taken after the expiration of the appeal period prescribed in § 1651.2.

(b) The registrant may appeal to a district appeal board the denial of his claim for a judgmental classification by the local board. The registrant may appeal to a district appeal board the denial of his claim for an administrative classification by the local board whenever its decisions is not unanimous.

[47 FR 4662, Feb. 1, 1982, as amended at 52 FR 24459, July 1, 1987]

§ 1651.2 Time within which registrants may appeal.

The registrant who wishes to appeal must file the appeal with his local board within 15 days after the date he is mailed a notice of classification action. The registrant who wishes a personal appearance before the district appeal board must file the request at the same time he files the appeal.

§ 1651.3 Procedures for taking an appeal.

(a) When the Director of Selective Service appeals to a district appeal board he shall place in the registrant's file a written statement of his reasons for taking such appeal. When an appeal is taken by the Director, the registrant will be notified that the appeal has been taken, the reason therefor, and that the registrant may appear in person before the appeal board in accord with § 1651.4(e).

(b) The registrant may appeal the classification action of the local board by filing with it a written notice of appeal. The registrant's notice of appeal need not be in a particular form but must include the name of the registrant and his request. Any notice shall be liberally construed so as to permit the appeal.

(c) The registrant may also request an opportunity to appear in person before the district appeal board and such appeal will be considered by the board having jurisdiction over the local board which last classified him.

(d) The registrant may attach to his appeal a statement specifying the reasons he believes the classification action that he is appealing is inappropriate, directing attention to any information in his file, and setting out any information relevant to his claim.

§ 1651.4 Review by district appeal board.

(a) An appeal to the district appeal board is determined by the classification of the registrant in a class other than 1-A or by its refusal to take such action. No action shall be taken by the board in the absence of a quorum of its prescribed membership.

(b) Prior to the adjudication of an appeal, the clerk of the appeal board or any compensated employee authorized to perform the administrative duties of the board shall review the file to insure that no procedural errors have occurred during the history of the current claim. Files containing procedural errors will be returned to the local

board that classified the registrant for any additional processing necessary to correct such errors.

(c) Files containing procedural errors that were not detected during the initial screening but which subsequently surfaced during processing by the appeal board, will be acted on and the board will take such action necessary to correct the errors and process the appeal to completion.

(d) A board shall consider appeals in the order of their having been filed.

(e) Upon receipt of the registrant's file, a board shall ascertain whether the registrant has requested a personal appearance before the board. If no such request has been made, the board may classify the registrant on the bases of the material in his file.

(f) Not less than 10 days (unless the registrant requests an earlier appointment) in advance of the meeting at which his classification will be considered, the board shall inform any registrant with respect to whom the Director of Selective Service has appealed or who has requested a personal appearance that he may appear at such meeting and present written evidence bearing on his classification.

(g) During the personal appearance, only the registrant may address the board or respond to questions of the board. The registrant will not be permitted to present witnesses at the personal appearance before the district appeal board. A registrant may, however, be accompanied by an advisor of his choosing and may confer with the advisor before responding to an inquiry or statement by the board: *Provided*, That, those conferences do not substantially interfere with or unreasonably delay the orderly process of the personal appearance.

(h) If, in the opinion of the board, the informal, administrative nature of the hearing is unduly disrupted by the presence of an advisor during the personal appearance, the board chairman may require the advisor to leave the hearing room. In such case, the board chairman shall put a statement of reasons for his action in the registrant's file.

(i) Whenever a registrant who has filed a claim for whom a personal appearance has been scheduled, fails to appear in accord with such schedule, the board shall consider any written explanation of such failure that has been filed within 5 days (or extension thereof granted by the board) after such failure to appear. If the board determines that the registrant's failure to appear was for good cause it shall reschedule the registrant's personal appearance. If the board does not receive a timely written explanation of the registrant's failure to appear for his scheduled personal appearance or if the board determines that the registrant's failure to appear was not for good cause, the registrant will be deemed to have abandoned his request for personal appearance and he will be classified on the basis of the material in his file. The board will notify the registrant in writing of its action under this paragraph.

(j) A quorum of the prescribed membership of a board shall be present during all personal appearances. Only those members of the board before whom the registrant appears shall classify him.

(k) At any personal appearance, the registrant may: Present his oral testimony; point out the class or classes in which he thinks he should have been placed; and direct attention to any information in his file. The registrant may present any additional written information he believes will assist the board in determining his proper classification. The information furnished should be as concise as possible.

(l) The registrant may summarize in writing the oral information that he presented. Such summary shall be placed in the registrant's file.

(m) A summary will be made of oral testimony given by the registrant at his personal appearance and such summary shall be placed in the registrant's file.

(n) A district appeal board shall classify a registrant who has requested a personal appearance after he:

(1) Has appeared before the board; or

(2) Has withdrawn his request to appear; or

(3) Has abandoned his right to an opportunity to appear; or

(4) Has failed to appear.

(o) In considering a registrant's appeal, a board shall not receive or consider any information other than the following:

(1) Information contained in the registrant's file; and

(2) Oral statements by the registrant during the registrant's personal appearance; and

(3) Written evidence submitted by the registrant to the board during his personal appearance.

(p) In the event a board classifies the registrant in a class other than that which he requested, it shall record its reasons therefor in the file.

(q) The making of verbatim transcripts, and the using of cameras or other recording devices are prohibited in proceedings before the board. This does not prevent the registrant or Selective Service from making a written summary of his testimony.

(r) Proceedings before the appeal boards shall be open to the public only upon the request of or with the permission of the registrant. The board chairman may limit the number of persons attending the hearing in order to maintain order. If during the hearing the presence of non-participants in the proceedings becomes disruptive the chairman may close the hearing.

[47 FR 4662, Feb. 1, 1982, as amended at 52 FR 24459, July 1, 1987]

§ 1651.5 File to be returned after appeal to the district appeal board is decided.

When the appeal to a district appeal board has been decided, the file shall be returned as prescribed by the Director of Selective Service.

PART 1653—APPEAL TO THE PRESIDENT

Sec.

1653.1 Who may appeal to the President.
1653.2 Procedures for taking an appeal to the President.
1653.3 Review by the National Appeal Board.
1653.4 File to be returned after appeal to the President is decided.

AUTHORITY: Military Selective Service Act, 50 U.S.C. App. 451 *et seq.*: E.O. 11623.

SOURCE: 47 FR 4663, Feb. 1, 1982, unless otherwise noted.

§ 1653.1 Who may appeal to the President.

(a) The Director of Selective Service may appeal to the President from any non-unanimous determination of a district appeal board when he deems it necessary to assure the fair and equitable administration of the Selective Service Law: *Provided,* That, no such appeal will be taken after the expiration of the appeal period prescribed in paragraph (b) of this section.

(b) When a registrant has been classified by a district appeal board and one or more members of the board dissented from that classification, he may within 15 days after a notice thereof has been mailed, appeal to the President and may request a personal appearance before the National Selective Service Appeal Board.

§ 1653.2 Procedures for taking an appeal to the President.

(a) When the Director of Selective Service appeals to the President he shall place in the registrant's file a written statement of his reasons for taking such appeal. When an appeal is taken by the Director the registrant will be notified that the appeal has been taken, the reasons therefor, and that the registrant may appear in person before the National Board in accord with § 1653.1(b).

(b) An appeal to the President by the registrant shall be taken by filing a written notice of appeal with the local board that classified him. He may at the same time file a written request to appear before the National Selective Service Appeal Board. Such notice need not be in any particular form but must state the name of the registrant and the fact that he wishes the President to review the determination.

§ 1653.3 Review by the National Appeal Board.

(a) An appeal to the President is determined by the National Appeal Board by its classification of the registrant in a class other than 1-A or by its refusal to take such action. No action shall be taken by the board in the absence of a quorum of its prescribed membership.

(b) Prior to the adjudication of an appeal, the clerk of the appeal board or any compensated employee authorized

to perform the administrative duties of the board shall review the file to insure that no procedural errors have occurred during the history of the current claim. Files containing procedural errors will be returned to the board where the errors occurred for any additional processing necessary to correct such errors.

(c) Files containing procedural errors that were not detected during the initial screening but which subsequently surfaced during processing by the appeal board, will be acted on and the board will take such action necessary to correct the errors and process the appeal to completion.

(d) The board shall consider appeals in the order of their having been filed.

(e) Upon receipt of the registrant's file, the board shall ascertain whether the registrant has requested a personal appearance before the board. If no such request has been made, the board may classify the registrant on the basis of the material in his file.

(f) The board shall proceed to classify any registrant who has not requested a personal appearance after the specified time in which to request a personal appearance has elapsed.

(g) Not less than 10 days in advance of the meeting at which his claim will be considered, the board shall inform any registrant with respect to whom the Director of Selective Service has appealed or who has requested a personal appearance that he may appear at such meeting and present written evidence bearing on his classification.

(h) During the personal appearance only the registrant may address the board or respond to questions of the board. The registrant will not be permitted to present witnesses at the personal appearance before the National Appeal Board. A registrant may, however, be accompanied by an advisor of his choosing and may confer with the advisor before responding to an inquiry or statement by the board: *Provided*, That, those conferences do not substantially interfere with or unreasonably delay the orderly process of the personal appearance.

(i) If, in the opinion of the board, the informal, administrative nature of the personal appearance is unduly disrupted by the presence of an advisor, the board chairman may require the advisor to leave the hearing room. In such a case, the board chairman shall put a statement of reasons for his action in the registrant's file.

(j) Whenever a registrant who has filed a claim for whom a personal appearance has been scheduled fails to appear in accord with such schedule, the board shall consider any written explanation of such failure that has been filed within five days (or extension thereof granted by the board) after such failure to appear. If the board determines that the registrant's failure to appear was for good cause it shall reschedule the registrant's personal appearance. If the board does not receive a timely written explanation of the registrant's failure to appear for his scheduled personal appearance or if the board determines that the registrant's failure to appear was not for good cause, the registrant will be deemed to have abandoned his request for personal appearance and the board will proceed to classify him on the basis of the material in his file. The registrant will be notified in writing of its action under this paragraph.

(k) A quorum of the prescribed membership of a board shall be present during all personal appearances. Only those members of the board before whom the registrant appears shall classify him.

(l) At any such appearance, the registrant may: Present oral testimony; point out the class or classes in which he thinks he should have been placed; and direct attention to any information in his file. The registrant may present such further written information as he believes will assist the board in determining his proper classification. The information furnished should be as concise as possible.

(m) The registrant may summarize in writing the oral information that he presented and any such summary shall be placed in his file.

(n) A summary will be made of the oral testimony given by the registrant at his personal appearance and such summary shall be placed in the registrant's file.

(o) The board shall classify a registrant who has requested a personal appearance after he:

(1) Has appeared before the National Board; or

(2) Has withdrawn his request to appear; or

(3) Has waived his right to an opportunity to appear; or

(4) Has failed to appear.

(p) Whenever the National Board or the panel thereof to which a case has been assigned cannot act on the case of a registrant, and there is no other panel of the National Board to which the case may be transferred, the decision of the District Appeal Board will be final.

(q) In considering a registrant's appeal, the board shall not receive or consider any information other than the following:

(1) Information contained in the registrant's file; and

(2) Oral statements by the registrant at the registrant's personal appearance; and

(3) Written evidence submitted by the registrant to the board during his personal appearance.

(r) In the event that the board classifies the registrant in a class other than that which he requested, it shall record its reasons therefor in his file.

(s) The making of verbatim transcripts, and the using of cameras or other recording devices are prohibited in proceedings before the board. This does not prevent the registrant or Selective Service from making a written summary of his testimony.

(t) Proceedings before the National Appeal Board are closed to the public.

[47 FR 4663, Feb. 1, 1982, as amended at 52 FR 24459, July 1, 1987]

§ 1653.4 File to be returned after appeal to the President is decided.

When the appeal to the President has been decided, the file shall be returned as prescribed by the Director of Selective Service.

PART 1656—ALTERNATIVE SERVICE

Sec.

1656.1 Purpose; definitions.
1656.2 Order to perform alternative service.
1656.3 Responsibility for administration.
1656.4 Alternative Service Office: jurisdiction and authority.
1656.5 Eligible employment.
1656.6 Overseas assignments.
1656.7 Employer responsibilities.
1656.8 Employment agreements.
1656.9 Alternative service worker's responsibilities.
1656.10 Job placement.
1656.11 Job performance standards and sanctions.
1656.12 Job reassignment.
1656.13 Review of alternative service job assignments.
1656.14 Postponement of reporting date.
1656.15 Suspension of order to perform alternative service because of hardship to dependents.
1656.16 Early release—grounds and procedures.
1656.17 Administrative complaint process.
1656.18 Computation of creditable time.
1656.19 Completion of alternative service.
1656.20 Expenses for emergency medical care.

AUTHORITY: Sec. 6(j) Military Selective Service Act; 50 U.S.C. App. 456(j).

SOURCE: 48 FR 16676, Apr. 19, 1983, unless otherwise noted.

§ 1656.1 Purpose; definitions.

(a) The provisions of this part govern the administration of registrants in Class 1-W and the Alternative Service Program.

(b) The definitions of this paragraph shall apply in the interpretation of the provisions of this part:

(1) *Alternative Service (AS)*. Civilian work performed in lieu of military service by a registrant who has been classified in Class 1-W.

(2) *Alternative Service Office (ASO)*. An office to administer the Alternative Service Program in a specified geographical area.

(3) *Alternative Service Office Manager (ASOM)*. The head of the ASO.

(4) *Alternative Service Work*. Civilian work which contributes to the maintenance of the national health, safety or interest, as the Director may deem appropriate.

(5) *Alternative Service Worker (ASW)*. A registrant who has been found to be qualified for service and has been ordered to perform alternative service (Class 1-W).

(6) *Creditable Time*. Time that is counted toward an ASWs fulfillment of his alternative service obligation.

(7) *Director*. The Director of Selective Service, unless used with a modifier.

(8) *Employer*. Any institution, firm, agency or corporation engaged in lawful activity in the United States, its territories or possessions, or in the Commonwealth of Puerto Rico, that has been approved by Selective Service to employ ASWs.

(9) *Job Assignment*. A job with an eligible employer to which an ASW is assigned to perform his alternative service.

(10) *Job Bank*. A current inventory of alternative service job openings.

(11) *Job Matching*. A comparison of the ASW's work experience, education, training, special skills, and work preferences with the requirements of the positions in the job bank.

(12) *Job Placement*. Assignment of the ASW to alternative service work.

(13) *Open Placement*. The assignment of ASWs without employer interview to employers who have agreed to employ all ASWs assigned to them up to an agreed number.

[48 FR 16676, Apr. 19, 1983, as amended at 69 FR 20544, Apr. 16, 2004]

§ 1656.2 Order to perform alternative service.

(a) The local board of jurisdiction shall order any registrant who has been classified in Class 1-O or 1-O-S to perform alternative service at a time and place to be specified by the Director.

(b) When the local board orders a registrant to perform alternative service, it shall be the duty of the registrant to report for and perform alternative service at the time and place ordered unless the order has been canceled. If the time when the registrant is ordered to report for alternative service is postponed, it shall be the continuing duty of the registrant to report for and perform alternative service at such time and place as he may be reordered. Regardless of the time when or the circumstances under which a registrant fails to report for and perform alternative service when it is his duty to do so, it shall thereafter be his continuing duty from day to day to report for and perform alternative service at the place specified in the order to report for and perform alternative service.

(c) The Director may authorize a delay of reporting for alternative service for any registrant whose date of induction conflicts with a religious holiday historically observed by a recognized church, religious sect or religious organization of which he is a member. Any registrant so delayed shall report for alternative service on the next business day following the religious holiday.

(d)(1) Any registrant who is satisfactorily pursuing a full-time course of instruction at a high school or similar institution of learning and is issued an order to perform alternative service shall, upon presentation of appropriate facts in the manner prescribed by the Director of Selective Service, have his date to report to perform alternative service postponed:

(i) Until the time of his graduation therefrom; or

(ii) Until he attains the twentieth anniversary of his birth; or

(iii) Until the end of his last academic year, even if he has attained the twentieth anniversary of his birth; or

(iv) Until he ceases satisfactorily to pursue such course of instruction, whichever is the earliest.

(2) Any registrant who, while satisfactorily pursuing a full-time course of instruction at a college, university or similar institution of learning, is ordered to perform alternative service shall, upon the presentation of appropriate facts in the manner prescribed by the Director of Selective Service, have his date to report to perform alternative service.

(i) Until the end of the semester or term, or in the case of his last academic year, the end of the academic year; or

(ii) Until he ceases to satisfactorily pursue such course of instruction, whichever is the earlier.

(e) After the order to perform alternative service has been issued, the Director may postpone for a specific time the date when such registrant is required to report in the following circumstances:

(1) In the case of the death of a member of the registrant's immediate family, extreme emergency involving a member of the registrant's immediate family, serious illness or injury of the registrant, or other emergency beyond the registrant's control. The period of postponement shall not exceed 60 days

from the date of the order to perform alternative service. When necessary, the Director may grant one further postponement but the total postponement shall not exceed 90 days from the reporting date on the order to perform alternative service.

(2) When the registrant qualifies and is scheduled for a State or National examination in a profession or occupation which requires certification before being authorized to engage in the practice of that profession or occupation.

(f) The Director shall issue to each registrant whose reporting date to perform alternative service is postponed a written notice thereof.

(g) A postponement of reporting date to perform alternative service shall not render invalid the order to report for alternative service which has been issued to the registrant, but shall operate only to postpone the reporting date, and the registrant shall report on the new date scheduled without having issued to him a new order to report for alternative service.

(h) Any registrant receiving a postponement under the provisions of this section, shall, after the expiration of such postponement, be rescheduled to report for alternative service at the place to which he was originally ordered.

[52 FR 8891, Mar. 20, 1987]

§ 1656.3 Responsibility for administration.

(a) The Director in the administration of the Alternative Service Program shall establish and implement appropriate procedures to:

(1) Assure that the program complies with the Selective Service Law;

(2) Provide information to ASWs about their rights and duties;

(3) Find civilian work for ASWs;

(4) Place ASWs in jobs approved for alternative service;

(5) Monitor the work performance of ASWs placed in the program;

(6) Order reassignment and authorize job separation;

(7) Issue certificates of completion;

(8) Specify the location of Alternative Service Offices;

(9) Specify the geographical area in which the ASOs shall have jurisdiction over ASWs;

(10) Refer to the Department of Justice, when appropriate, any ASW who fails to perform satisfactorily his alternative service;

(11) Perform all other functions necessary for the administration of the Alternative Service Program; and

(12) Delegate any of his authority to such office, agent or person as he may designate and provide as appropriate for the subdelegation of such authority.

(b) The Region Director shall be responsible for the administration and operation of the Alternative Service Program in his Region as prescribed by the Director.

(c) The State Director shall perform duties for the administration and operation of the Alternative Service Program in his State as prescribed by the Director.

(d) The ASOM shall perform duties for the administration and operation of the Alternative Service Program as prescribed by the Director.

(1) The ASO shall be an office of record that is responsible for the administration and operation of the Alternative Service Program in its assigned geographical area of jurisdiction.

(2) The staff of each ASO shall consist of as many compensated employees as shall be authorized by the Director.

(3) Appointment of civilians to ASO positions requiring direct dealing with ASWs will be made as soon as feasible.

(e) The manager of an area office shall perform duties for Alternative Service as prescribed by the Director.

[48 FR 16676, Apr. 19, 1983, as amended at 69 FR 20544, Apr. 16, 2004]

§ 1656.4 Alternative Service Office: jurisdiction and authority.

(a) Jurisdiction over the ASW will be transferred from the area office immediately after his classification in Class 1-W to the ASO that administers the Alternative Service Program in the area in which he is assigned to perform alternative service.

(b) The ASO shall:

(1) Evaluate and approve jobs and employers for Alternative Service;

(2) Order the ASW to report for alternative service work;

(3) Issue such orders as are required to schedule the ASW for job interviews;

(4) Issue such orders as are required to schedule the ASW for job placement;

(5) Monitor the ASW's job performance;

(6) Issue a certificate of satisfactory completion of the ASW's Alternative Service obligation;

(7) Return the ASW to the jurisdiction of the area office from which he was directed to perform Alternative Service; and

(8) Perform such other actions the Director may authorize as necessary to administer the Alternative Service Program.

§ 1656.5 Eligible employment.

(a) The Director will determine in accordance with the Selective Service Law which civilian employment programs or activities are appropriate for Alternative Service work.

(1) Employers which are considered appropriate for Alternative Service assignments are limited to:

(i) The U.S. Government or a state, territory or possession of the United States or a political subdivision thereof, the District of Columbia or the Commonwealth of Puerto Rico;

(ii) Organizations, associations or corporations primarily engaged either in a charitable activity conducted for the benefit of the general public or in carrying out a program for the improvement of the public health, welfare or environment, including educational and scientific activities in support thereof, when such activity or program is not principally for the benefit of the members of such organization, association or corporation or for increasing the membership thereof.

(2) Employment programs or activities generally considered to be appropriate for Alternative Service work include:

(i) Health care services, including but not limited to hospitals, nursing homes, extended care facilities, clinics, mental health programs, hospices, community outreach programs and hotlines;

(ii) Educational services, including but not limited to teachers, teacher's aides, counseling, administrative support, parent counseling, recreation, remedial programs and scientific research;

(iii) Environmental programs, including but not limited to conservation and firefighting, park and recreational activities, pollution control and monitoring systems, and disaster relief;

(iv) Social services, including but not limited to sheltered or handicapped workshops, vocational training or retraining programs, senior citizens activities, crisis intervention and poverty relief;

(v) Community services, including but not limited to fire protection, public works projects, sanitation services, school or public building maintenance, correctional facility support programs, juvenile rehabilitation programs, and

(vi) Agricultural work.

(b) An organization desiring to employ ASWs is encouraged to submit a request in writing to the Director or an ASOM for approval. Such requests will be considered at any time.

(c) Selective Service shall negotiate employment agreements with prospective employers with the objective of obtaining an adequate number of agreements to assure the timely placement of all ASWs. Participating employers will provide prospective job listings to Selective Service.

(d) Selective Service shall also negotiate employment agreements with eligible employers wherein the employer will agree to hire a specified number of ASWs for open placement positions.

(e) A registrant classfied in Class 1-O or Class 1-O-S may seek his own alternative service work by identifying a job with an employer he believes would be appropriate for Alternative Service assignments and by having the employer advise the ASO in writing that he desires to employ the ASW. The acceptability of the job and employer so identified will be evaluated in accordance with § 1656.5(a).

[48 FR 16676, Apr. 19, 1983, as amended at 51 FR 17627, May 14, 1986; 52 FR 8892, Mar. 20, 1987; 54 FR 27001, June 27, 1989]

§ 1656.6 Overseas assignments.

Alternative Service job assignments outside the United States, its territories or possessions or the Commonwealth of Puerto Rico, will be allowed when:

(a) The employer is deemed eligible to employ ASWs and is based in the United States, its territories or possessions, or the Commonwealth of Puerto Rico;

(b) The job meets the criteria listed in § 1656.5(a);

(c) The ASW and the employer submit a joint application to Selective Service for the ASW to be employed in a specific job;

(d) The employer satisfies Selective Service that the employer has the capability to supervise and monitor the overseas work of the ASW; and

(e) International travel is provided without expense to Selective Service.

§ 1656.7 Employer responsibilities.

Employers participating in the Alternative Service Program are responsible for:

(a) Complying with the employment agreement with Selective Service;

(b) Providing a clear statement of duties, responsibilities, compensation and employee benefits to the ASW;

(c) Providing full-time employment for ASWs;

(d) Assuring that wages, hours and working conditions of ASWs confrom with Federal, state and local laws;

(e) Providing adequate supervision of ASWs in their employ; and

(f) Providing nondiscriminatory treatment of ASWs in their employ.

§ 1656.8 Employment agreements.

(a) *Nature of Agreement.* Before any ASW is placed with an employer, Selective Service and the employer shall enter into an employment agreement that specifies their respective duties and responsibilities under the Alternative Service Program.

(b) *Restrictions on Selective Service.* The Selective Service System shall not act in any controversy involving ASW's wages, hours and working conditions except to the extent any of these subjects is specifically covered in § 1656.7, § 1656.9, or the employment agreement between Selective Service and the employer.

(c) *Investigating and Negotiating.* Whenever there is evidence that an employer appears to be in violation of § 1656.7, Selective Service will investigate the matter. If the investigation produces substantial evidence of violations of § 1656.7, Selective Service will resolve the matter.

(d) *Termination of Employment Agreement.* If a resolution of a dispute cannot be reached by negotiation within a reasonable time, the Selective Service System shall terminate the employment agreement and shall reassign the ASW.

§ 1656.9 Alternative service worker's responsibilities.

(a) A registrant classified in Class 1-W is required to comply with all orders issued under this part.

(b) A registrant classified in Class 1-W is liable to perform 24 months of creditable time toward completion of Alternative Service, unless released earlier by the Director.

§ 1656.10 Job placement.

(a) Selective Service will maintain a job bank for the exclusive purpose of placing ASWs in alternative service jobs.

(b) An ASW who has identified his own job in accordance with § 1656.5(e) of this part may be assigned by the ASO in that job pending review of the job by Selective Service. If the job is then approved as Alternative Service Work in accordance with § 1656.5(a) the ASW will receive creditable time beginning with the date he was placed on the job by Selective Service. If the job is not approved he will not receive creditable time and will be placed by Selective Service in a position approved for Alternative Service Work. Selective Service must review the job within 30 calendar days of the time it assigned the ASW to begin work. If the elapsed time from date of placement to the date of Selective Service review exceeds 30 days, the ASW will receive creditable time from the date of placement regardless of the final determination of employer eligibility made by Selective Service. If the placement is ultimately determined to be inappropriate for Alternative Service the ASW will be reassigned in accordance with § 1656.12.

(c) In making job interview referrals and in making assignments of ASWs to jobs, Selective Service will consider the compatibility of the ASW's skills,

work experience, and preferences with the qualification criteria for the job.

(d) When An ASW is hired, the ASO will issue a Job Placement Order specifying the employer, the time, date and place to report for his alternative service work.

(e) The ASO will normally place the ASW in an alternative service job within 30 calendar days after classification in Class 1-W.

§ 1656.11 Job performance standards and sanctions.

(a) *Standards of Performance.* An ASW is responsible for adhering to the standards of conduct, attitude, appearance and performance demanded by the employer of his other employees in similar jobs. If there are no other employees, the standards shall conform to those that are reasonable and customary in a similar job.

(b) *Failure to Perform.* An ASW will be deemed to have failed to perform satisfactorily whenever:

(1) He refuses to comply with an order of the Director issued under this part;

(2) He refuses employment by an approved employer who agrees to hire him;

(3) His employer terminates the ASW's employment because his conduct, attitude, appearance or performance violates reasonable employer standards; or

(4) He quits or leaves his job without reasonable justification, and has not submitted an appeal of his job assignment to the District Appeal Board.

(c) *Sanctions for ASW's Failure to Perform.* (1) The sanctions for failure to meet his Alternative Service obligation are job reassignment, loss of creditable time during such period and referral to the Department of Justice for failure to comply with the Military Selective Service Act.

(2) Prior to invoking any of the sanctions discussed herein, the ASO will conduct a review as prescribed in § 1656.17 of all allegations that an ASW has failed to perform pursuant to any of the provisions of § 1656.11(b).

[48 FR 16676, Apr. 19, 1983, as amended at 69 FR 20544, Apr. 16, 2004]

§ 1656.12 Job reassignment.

(a) *Grounds for Reassignment.* The Director may reassign an ASW whenever the Director determines that:

(1) The job assignment violates the ASW's religious, moral or ethical beliefs or convictions as to participation in a war that led to his classification as a conscientious objector or violates § 1656.5(a) of this part.

(2) An ASW experiences a change in his mental or physical condition which renders him unfit or unable to continue performing satisfactorily in his assigned job;

(3) An ASW's dependents incur a hardship which is not so severe as to justify a suspension of the Order to Perform Alternative Service under § 1656.15;

(4) The ASW's employer ceases to operate an approved program or activity;

(5) The ASW's employer fails to comply with terms and conditions of these regulations or;

(6) Continual and severe differences between the ASW's employer and ASW remain unresolved.

(7) The sanctions authorized in § 1656.11 should be applied.

(b) *Who May Request Reassignment.* Any ASW may request reassignment to another job. An employer may request job reassignment of an ASW who is in his employ.

(c) *Method for Obtaining a Reassignment.* All requests for reassignment must be in writing with the reasons specified. The request may be filed with the ASO of jurisdiction at any time during an ASW's alternative service employment. An ASW must continue in his assigned job, if available, until the request for assignment is approved.

§ 1656.13 Review of alternative service job assignments.

(a) Review of ASW job assignments will be accomplished in accordance with the provisions of this subsection.

(b) Whenever the ASW believes that his job assignment violates his religious, moral or ethical beliefs or convictions as to participation in war that led to his classification as a conscientious objector or is in violation of the provisions of this part he may request

a reassignment by the ASOM, as provided for in § 1656.12.

(c) The ASOM shall reassign the ASW if the ASOM concludes that the ASW's work assignment violates his religious, moral or ethical beliefs or convictions as to participation in war which led to his classification as a CO or is in violation of the provisions of this part.

(d) If the ASOM does not reassign the ASW, the ASW may, within 15 days after the date of mailing of the decision of the ASOM, request a review of his job assignment by a District Appeal Board.

(e) It shall be the function of the District Appeal Board to determine whether or not an ASW's job assignment violates the ASW's religious, moral, or ethical beliefs of convictions as to participation in war which led to his classification as a conscientious objector or is in violation of the provisions § 1656.5(a) of this part. In making the former determination, the Review Board must be convinced by the ASW that if the ASW performed the job, his convictions as to participation in war would be violated in a similar way as if the ASW had participated in war.

(f) The District Appeal Board may affirm the assignment or order the reassignment of the ASW in any matter considered by it.

(g) Procedures of the District Appeal Board are:

(1) Appeals to the Board shall be in writing, stating as clearly as possible the ground for the appeal.

(2) The ASW may appear before the Board at his request. He may not be represented by counsel or present witnesses. The ASOM or his representative may represent the Selective Service System at the hearing and present evidence.

(3) The Board's determination will be based on all documents in the ASW's file folder and statements made at the hearing.

(4) The decision of the Board will be binding only in the case before it. A decision of a Board will not be relied upon by a Board in any other case.

(5) A decision of the Board is not subject to review within the Selective Service System.

[48 FR 16676, Apr. 19, 1983, as amended at 69 FR 20544, Apr. 16, 2004]

§ 1656.14 Postponement of reporting date.

(a) *General.* The reporting date in any of the following orders may be postponed in accord with this section.

(1) Report for Job Placement;

(2) Report for a Job Interview; or

(3) Report to an Employer to Commence Employment.

(b) *Requests for Postponement.* A request for postponement of a reporting date specified in an order listed in paragraph (a) must be made in writing and filed prior to the reporting date with the office which issued the order. Such requests must include a statement of the nature of the emergency and the expected period of its duration.

(c) *Grounds for Postponement.* An ASW may, upon presentation of the appropriate facts in his request, be granted a postponement based on one or more of the following conditions:

(1) The death of a member of his immediate family;

(2) An extreme emergency involving a member of his immediate family;

(3) His serious illness or injury; or

(4) An emergency condition directly affecting him which is beyond his control.

(d) *Basis for Considering Request.* The ASW's eligibility for a postponement shall be determined by the office of jurisdiction based upon official documents and other written information contained in his file. Oral statements made by the ASW or made by another person in support of the ASW shall be reduced to writing and placed in the ASW's file.

(e) *Duration of Postponement.* The initial postponement shall not exceed 60 days from the reporting date in the order. When necessary, the Director may grant one further postponement, but the total postponement period shall not exceed 90 days from the reporting date in the order invovled.

(f) *Termination of Postponement.* (1) A postponement may be terminated by the Director for cause upon no less than ten days written notice to the ASW.

(2) Any postponement shall be terminated when the basis for the postponement has ceased to exist.

(3) It is the responsibility of the ASW promptly to notify in writing the office

that granted the postponement whenever the basis for which his postponement was granted ceases to exist.

(g) *Effect of Postponement*. A postponement of the reporting date in an order shall not render the order invalid, but shall only serve to postpone the date on which the ASW is to report. The ASW shall report at the expiration or termination of the postponement.

(h) *Religious Holiday*. The Director may authorize a delay of reporting under any of the orders specified for an ASW whose date to report conflicts with a religious holiday historically observed by a recognized church, religious sect or religious organization of which he is a member. Any ASW so delayed shall report on the next business day following the religious holiday.

§ 1656.15 Suspension of order to perform alternative service because of hardship to dependents.

(a) Whenever, after an ASW has begun work, a condition develops that results in hardship to his dependent as contemplated by § 1630.30(a) of this chapter which cannot be alleviated by his reassignment under § 1656.12 (a)(3) of this part, the ASW may request a suspension of Order to Perform Alternative Service. If the local board that ordered the ASW to report for Alternative Service determines he would be entitled to classification in Class 3-A, assuming that the ASW were eligible to file a claim for that class, further compliance with his order shall be suspended for a period not to exceed 365 days, as the local board specifies. Extensions of not more than 365 days each may be granted by the local board so long as the hardship continues until the ASW's liability for training and service under the Military Selective Service Act terminates.

(b) An ASW may file a request for the suspension of his Order to Perform Alternative Service with the ASO. This request must be in writing, state as clearly as possible the basis for the request, and be signed and dated by the ASW. The ASW must continue working in his assigned job until his request for the suspension of his Order to Perform Alternative Service has been approved.

(c) Local boards shall follow the procedures established in parts 1642 and 1648 of this chapter to the extent they are applicable in considering a request for the suspension of an Order to Perform Alternative Service.

§ 1656.16 Early release—grounds and procedures.

(a) *General Rule of Service Completion*. An ASW will not be released from alternative service prior to completion of 24 months of creditable service unless granted an early release.

(b) *Reasons For Early Release*. The Director may authorize the early release of an ASW whenever the ASO determines that the ASW:

(1) Has failed to meet the performance standards of available alternative service employment because of physical, mental or moral reasons;

(2) No longer meets the physical, mental or moral standards that are required for retention in the Armed Forces based on a physical or mental examination at a MEPS or other location designated by Selective Service;

(3) Is planning to return to school and has been accepted by such school and scheduled to enter within 30 days prior to the scheduled completion of his alternative service obligation;

(4) Has been accepted for employment and that such employment will not be available if he remains in alternative service the full 24 months. Such early release shall not occur more than 30 days before the scheduled completion of his alternative service obligation; or

(5) Has enlisted in or has been inducted into the Armed Forces of the United States.

(c) *Reclassification and Records*. Upon granting an early release to an ASW, the Director will reclassify the ASW and transfer his records in accordance with § 1656.19 of this part.

§ 1656.17 Administrative complaint process.

(a) Whenever the ASOM learns that the ASW may have failed to perform satisfactorily his work (see § 1656.11(b)) or he receives a complaint by an employer or an ASW involving the ASW's work other than matters described in

§ 1656.8(b) of this part, he shall take necessary action to:

(1) Interview, as appropriate, all parties concerned to obtain information relevant to the problems or complaints;

(2) Place a written summary of each interview in the ASW's file and employer's file;

(3) Inform the persons interviewed that they may prepare and submit to him within ten days after the interview their personal written statements concerning the problem;

(4) Place such statements in the ASW's file; and

(5) Resolve the matter.

(b) The employer or ASW may seek a review of the decision pursuant to § 1656.17(a)(5). Such request must be filed in writing with the ASO, for action by the State Director of Selective Service, within ten days after the date the notice of the decision is transmitted to the ASW and employer.

§ 1656.18 Computation of creditable time.

(a) Creditable time starts when the ASW begins work pursuant to an Order to Perform Alternative Service or 30 days after the issuance of such order, whichever occurs first. Creditable time will accumulate except for periods of:

(1) Work of less than 35 hours a week or an employer's full-time work week whichever is greater;

(2) Leaves of absence in a calendar year of more than 5 days in the aggregate granted by the employer to the ASW to attend to his personal affairs unless such absence is approved by the ASOM;

(3) Time during which an ASW fails or neglects to perform satisfactorily his assigned Alternative Service;

(4) Time during which the ASOM determines that work of the ASW is unsatisfactory because of his failure to comply with reasonable requirements of his employer;

(5) Time during which the ASW is not employed in an approved job because of his own fault; or

(6) Time during which the ASW is in a postponement period or his Order to Perform Alternative Service has been suspended.

(b) Creditable time will be awarded for periods of travel, job placement and job interviews performed under orders issued by Selective Service. Creditable time may be awarded for normal employer leave periods.

(c) Creditable time will be awarded to an ASW for the time lost after he leaves his job assignment following his request for reassignment on the basis of § 1656.13(b) of this part until he is reassigned pursuant to § 1656.13 (c) or (f) of this part. Creditable time for the corresponding period will be lost if neither the ASOM nor the District Appeal Board orders the ASW's reassignment on the basis of § 1656.12(a)(1) of this part.

[48 FR 16676, Apr. 19, 1983, as amended at 69 FR 20544, Apr. 16, 2004]

§ 1656.19 Completion of alternative service.

Upon completion of 24 months of creditable time served in alternative service or when released early in accordance with § 1656.16(b) (3) or (4):

(a) The ASW shall be released from the Alternative Service Program; and

(b) The Director shall issue to the ASW a Certificate of Completion and the registrant shall be reclassified in Class 4-W in accordance with § 1630.47 of this chapter, and

(c) The ASW's records shall be returned to the area office of jurisdiction after the ASW has completed his obligation or has been separated from the Alternative Service Program for any reason.

§ 1656.20 Expenses for emergency medical care.

(a) Claims for payment of actual and reasonable expenses for emergency medical care, including hospitalization, of ASWs who suffer illness or injury, and the transportation and burial of the remains of ASWs who suffer death as a direct result of such illness or injury will be paid in accordance with the provisions of this section.

(b) The term "emergency medical care, including hospitalization", as used in this section, means such medical care or hospitalization that normally must be rendered promptly after occurrence of the illness or injury necessitating such treatment. Discharge

by a physician or facility subsequent to such medical care or hospitalization shall terminate the period of emergency.

(c) Claims will be considered only for expenses:

(1) For which only the ASW is liable and for which there is no legal liability for his reimbursement except in accord with the provisions of this section; and

(2) That are incurred as a result of illness or injury that occurs while the ASW is acting in accord with orders of Selective Service to engage in travel or perform work for his Alternative Service employer.

(d) No claim shall be allowed in any case in which the Director determines that the injury, illness, or death occurred because of the negligence or misconduct of the ASW.

(e) No claim shall be paid unless it is presented to the Director within one year after the date on which the expense was incurred.

(f) Cost of emergency medical care including hospitalization greater than usual and customary fees for service established by the Social Security Administration, will *prima facie* be considered unreasonable. Payment for burial expenses shall not exceed the maximum that the Administrator of Veteran's Affairs may pay under the provisions of 38 U.S.C. 902(a) in any one case.

(g) Payment of claims when allowed shall be made only directly to the ASW or his estate unless written authorization of the ASW or the personal representative of his estate has been received to pay another person.

PART 1657—OVERSEAS REGISTRANT PROCESSING

Sec.

1657.1 Purpose; definition.
1657.2 Local boards.
1657.3 Distsrict appeal boards.
1657.4 Consideration of claims.
1657.5 Place of induction.
1657.6 Transportation.

AUTHORITY: Military Selective Service Act, 50 U.S.C. 451 *et seq.*; E.O. 11623.

SOURCE: 52 FR 24459, July 1, 1987, unless otherwise noted.

§ 1657.1 Purpose; definition.

(a) The provisions of this part apply to the processing of overseas registrants, and, where applicable, they supersede inconsistent provisions in this chapter.

(b) An overseas registrant is a registrant whose bona fide current address most recently provided by him to the Selective Service System is outside the United States, its territories or possessions, Commonwealth of Puerto Rico, Canada and Mexico.

§ 1657.2 Local boards.

The Director shall establish local boards with jurisdiction to determine claims of overseas registrants. Such boards shall consist of three or more members appointed by the President. The Director shall prescribe the geographic jurisdiction of each board, and designate or establish an area office to support it.

§ 1657.3 District appeal boards.

The Director shall establish district appeal boards with jurisdiction to determine appeals of claims of overseas registrants. Such boards shall consist of three or more members appointed by the President. The Director shall prescribe the geographic jurisdiction of each board.

§ 1657.4 Consideration of claims.

An overseas registrant's claim shall be determined by a local board (or its supporting area office) or appeal board as may be established in accord with this part or, upon the request of the registrant filed no later than the filing of his claim for reclassification, by the board having geographic jurisdiction over his permanent address within the United States last reported by him to the Selective Service System prior to issuance of his induction order.

§ 1657.5 Place of induction.

The Director may order an overseas registrant to any place in the world for induction.

§ 1657.6 Transportation.

(a) The Director shall furnish transportation for an overseas registrant

from the place at which the registrant's order to report for induction was sent to the place he is required to report for induction. If such registrant is not inducted, the Director shall furnish him transportation from the place he reported for induction to the place to which his order to report for induction was sent.

(b) In the event the personal appearance before a local board or appeal board of an overseas registrant is required or permitted by regulation, travel expenses incurred in personally appearing before the board shall be at the registrant's own expense.

PART 1659—EXTRAORDINARY EXPENSES OF REGISTRANTS

AUTHORITY: Military Selective Service Act, 50 U.S.C. App. 451 *et seq.*; E.O. 11623.

§ 1659.1 Claims.

(a) Claims for payment of actual and reasonable expenses of:

(1) Emergency medical care, including hospitalization of registrants who suffer illness or injury; and

(2) The transportation and burial of the remains of registrants who suffer death while acting under orders issued by or under the authority of the Director of Selective Service will be paid in accordance with the provisions of this section.

(b) Claims for payment of expenses incurred for the purposes set forth in paragraph (a) of this section shall be presented to the Director of Selective Service.

(c)(1) The term *emergency medical care, including hospitalization,* as used in this section, shall be construed to mean such medical care or hospitalization that normally must be rendered promptly after an occurrence of illness or injury. Discharge by a physician or facility subsequent to such medical care or hospitalization shall be justification to terminate the period of emergency.

(2) The death of a registrant shall be deemed to have occurred while acting under orders issued by or under the authority of the Director of Selective Service if it results directly from an illness or injury suffered by the registrant while so acting and occurs prior to the completion of an emergency medical care, including hospitalization, occasioned by such illness or injury.

(d) No such claim shall be paid unless it is presented within the period of one year from the date on which the expenses were incurred.

(e) No such claim shall be allowed in case it is determined that the cause of injury, illness, or death was due to negligence or misconduct of the registrant.

(f) Burial expenses shall not exceed the maximum prescribed in Section 11 of the Military Selective Service Act in any one case.

(g) Payment of such claims when allowed shall be made only:

(1) Directly to the person or facility with which the expenses were incurred; or

(2) By reimbursement to the registrant, a relative of the registrant, or the legal representative of the registrant's estate, for original payment of such expenses.

[47 FR 4664, Feb. 1, 1982]

PART 1662—FREEDOM OF INFORMATION ACT (FOIA) PROCEDURES

Sec.

1662.1 Applicability of this part.
1662.2 Procedure for requesting information.
1662.3 Identification of information requested.
1662.4 Consideration of requests for information.
1662.5 Inspection, copying, and obtaining copies.
1662.6 Fee schedule; waiver of fees.

AUTHORITY: 5 U.S.C. 552, as amended.

SOURCE: 47 FR 7223, Feb. 18, 1982, unless otherwise noted.

§ 1662.1 Applicability of this part.

The provisions of this part prescribe the procedures for requests for information under 5 U.S.C. 552, as amended (Freedom of Information Act).

§ 1662.2 Procedure for requesting information.

Requests for information under the Freedom of Information Act (FOIA)

shall be in writing and should be addressed to the Director, Selective Service System, ATTN: Records Manager, Washington, DC 20435.

§ 1662.3 Identification of information requested.

Any person who requests information under FOIA shall provide a reasonably specific description of the information sought so that it may be located without undue search. If the description is not sufficient, the records manager will notify the requester and, to the extent possible, indicate the additional information required. Every reasonable effort shall be made to assist a requester in the identification and location of the record or records sought.

§ 1662.4 Consideration of requests for information.

(a) Upon receipt of any request for information or records, the records manager will determine within 10 days (excepting Saturdays, Sundays, and legal federal holidays) whether it is appropriate to grant the request and will immediately provide written notification to the person making the request. If the request is denied, the written notification to the person making the request will include the reasons therefor and a notice that an appeal may be lodged with the Director of Selective Service.

(b) Appeals shall be in writing and addressed to the Director of Selective Service at the address specified in § 1662.2 of this part. The appeal shall include a statement explaining the basis for the appeal. Determinations of appeals will be in writing and signed by the Director, or his designee, within 20 days (excepting Saturdays, Sundays, and legal federal holidays). If, on appeal, the denial is in whole or in part upheld, the written determination will include the reasons therefor and also contain a notification of the provisions for judicial review.

§ 1662.5 Inspection, copying, and obtaining copies.

When a request for information has been approved in accord with § 1662.4, the person making the request may make an appointment to inspect or copy the materials requested during regular business hours by writing or telephoning the records manager at the address listed in § 1662.2. Such materials may be copied manually without charge, and reasonable facilities will be made available for that purpose. Also, copies of individual pages of such materials will be made available as specified in § 1662.6; however, the right is reserved to limit to a reasonable quantity the copies of such materials which may be made available in this manner.

§ 1662.6 Fee schedule; waiver of fees.

(a) *Definitions.* For the purposes of this section:

(1) *Direct costs* mean those expenditures which the Selective Service System (SSS) actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of the rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) The term *search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. *Search* should be distinguished from *review* of material in order to determine whether the material is exempt from disclosure (see paragraph (a)(4) of this section). Searches may be done manually or by computer using existing programming.

(3) *Duplication* refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies may take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(4) *Review* refers to the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and

otherwise to prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term *'commercial use' request* refers to a request from or on behalf of one who seeks information for the use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a request properly belongs in this category the agency must determine the use to which a requester will put the documents requested. Moreover where there is reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the agency may seek additional clarification before assigning the request to a specific category.

(6) The term *educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) The term *non-commercial scientific institution* refers to an institution that is not operated on a *commercial* basis as that term is referenced in paragraph (a)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) The term *representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of *news*) who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of *freelance* journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the agency may also look to the past publication record of a requester in making this determination.

(b) *Fees to be charged—categories of requesters.* There are four categories of FOIA requesters: Commercial use requesters; education and non-commercial scientific institutions; representatives of the news media; and other requesters. The FOI Reform Act prescribes specific levels of fees for each of these categories:

(1) *Commercial use requesters.* A request for documents for commercial use will be assessed charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the record sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. The cost of searching for and reviewing records will be recovered even if there is ultimately no disclosure of records (see paragraph (c)(5) of this section).

(2) *Educational and non-commercial scientific institution requesters.* Documents to requesters in this category will be provided for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(3) *Requesters who are representatives of the news media.* Documents will be provided to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (a)(8) of this section, and his or her request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought.

(4) *All other requesters.* The agency will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests from record subjects for records about themselves filed in the agency's systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction.

(c) *Assessment and collection of fees*—(1) *Aggregated requests.* If the Records Manager reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Records Manager may aggregate any such requests accordingly.

(2) *Payment procedures*—(i) *Fee payment.* The Records Manager may assume that a person requesting records pursuant to this part will pay the applicable fees, unless a request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (c)(4) of this section. Unless applicable fees are paid, the agency may use the authorities of the Debt Collection Act (Pub. L. 97-365), including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage payment.

(ii) *Advance payment.* (A) The Records Manager may require advance payment of any fee estimated to exceed $250. The Records Manager may also require full payment in advance where a requester has previously failed to pay fees in a timely fashion.

(B) If the Records Manager estimates that the fees will likely exceed $25, he will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) *Late charges.* The Records Manager may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Interest will be at the rate prescribed in section 3717 of title 31 U.S.C.A.

(4) *Waiver or reduction of fees*—(i) *Standards for determining waiver or reduction.* The Records Manager shall grant a waiver or reduction of fees chargeable under this section where it is determined that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Selective Service System and is not primarily in the commercial interest of the requester. The Records Manager shall also waive fees that are less than the average cost of collecting fees. In determining whether disclosure is in the public interest, the following factors may be considered:

(A) The relation of the records to the operations or activities of the System;

(B) The information value of the information to be disclosed;

(C) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(D) The significance of that contribution to the public understanding of the subject;

(E) The nature of the requester's personal interest, if any, in the disclosure requested; and

(F) Whether the disclosure would be primarily in the requester's commercial interest.

(ii) Contents of request for waiver. The Records Manager will normally

deny a request for a waiver of fees that does not include:

(A) A clear statement of the requester's interest in the requested documents;

(B) The use proposed for the documents and whether the requester will derive income or other benefit from such use;

(C) A statement of how the public will benefit from such use and from the release of the requested documents; and

(D) If specialized use of the documents or information is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(iii) *Burden of proof.* In all cases the burden shall be on the requester to present evidence or information in support of a request for a waiver of fees.

(5) *Fees for nonproductive search.* Fees for record searches and review may be charged even if not responsive documents are located or if the request is denied, particularly if the requester insists upon a search after being informed that it is likely to be nonproductive or that any records found are likely to be exempt from disclosure. The Records Manager shall apply the standards set out in paragraph (c)(4) of this section in determining whether to waive or reduce fees.

APPENDIX A TO §1662.6—FREEDOM OF INFORMATION FEE SCHEDULE

Duplication:

Photocopy, per standard page .....$.10
Paper Copies of microfiche, per frame .....$.10

Search and review:

Salary of the employee (the basic rate of pay of the employee plus 16 percent of that rate to cover benefits), performing the work of manual search and review.

Computer search and production:

For each request the Records Manager will separately determine the actual direct costs of providing the service, including computer search time, tape or printout production, and operator salary.

Special services:

The Records Manager may agree to provide and set fees to recover the costs of special services not covered by the Freedom of Information Act, such as certifying records or information, packaging and mailing records, and sending records by special methods such as express mail. The Records Manager may provide self-service photocopy machines and microfiche printers as a convenience to requesters and set separate perpage fees reflecting the cost of operation and maintenance of those machines.

Fee waivers:

For qualifying educational and noncommercial scientific institution requesters and representatives of the news media the Records Manager will not assess fees for review time, for the first 100 pages of reproduction, or, when the records sought are reasonably described, for search time. For other noncommercial use requests no fees will be assessed for review time, for the first 100 pages of reproduction, or for the first two hours of search time.

The Records Manager will waive in full fees that total less than $1.00 or that are less than the average cost of collecting fees.

The Records Manager will also waive or reduce fees, upon proper request, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the System and is not primarily in the commercial interest of the requester.

[52 FR 13665, Apr. 24, 1987]

PART 1665—PRIVACY ACT PROCEDURES

Sec.

1665.1 Rules for determining if an individual is the subject of a record.
1665.2 Requests for access.
1665.3 Access to the accounting of disclosures from records.
1665.4 Requests to amend records.
1665.5 Request for review.
1665.6 Schedule of fees.
1665.7 Information available to the public or to former employers of registrants.
1665.8 Systems of records exempted from certain provisions of this act.

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 47 FR 7224, Feb. 18, 1982, unless otherwise noted.

§1665.1 Rules for determining if an individual is the subject of a record.

(a) Individuals desiring to know if a specific system of records maintained by the Selective Service System (SSS) contains a record pertaining to them should address their inquiries to the Selective Service System, ATTN:

Records Manager, Public & Intergovernmental Affairs, Arlington, VA 22209-2425. The written inquiry should contain a specific reference to the system of records maintained by Selective Service listed in the SSS Notices of Systems of Records or it should describe the type of record in sufficient detail to reasonably identify the system of records. Notice of SSS Systems of Records subject to the Privacy Act is in the FEDERAL REGISTER and copies of the notices will be available upon request to the records manager. A compilation of such notices will also be made and published by the Office of Federal Register, in accord with section 5 U.S.C. 552a(f).

(b) At a minimum, the request should also contain sufficient information to identify the requester in order to allow SSS to determine if there is a record pertaining to that individual in a particular system of records. In instances when the information is insufficient to insure that disclosure will be to the individual to whom the information pertains, in view of the sensitivity of the information, SSS reserves the right to ask the requester for additional identifying information.

(c) Ordinarily the requester will be informed whether the named system of records contains a record pertaining to the requester within 10 days of receipt of such a request (excluding Saturdays, Sundays, and legal federal holidays). Such a response will also contain or reference the procedures which must be followed by the individual making the request in order to gain access to the record.

(d) Whenever a response cannot be made within the 10 days, the records manager will inform the requester of the reason for the delay and the date by which a response may be anticipated.

[47 FR 7224, Feb. 18, 1982; 69 FR 1525, Jan. 9, 2004]

§ 1665.2 Requests for access.

(a) Requirement for written requests. Individuals desiring to gain access to a record pertaining to them in a system of records maintained by SSS must submit their request in writing in accord with the procedures set forth in paragraph (b) below.

(b) *Procedures*—(1) *Content of the request.* (i) The request for access to a record in a system of records shall be addressed to the records manager, at the address cited above, and shall name the system of records or contain a description of such system of records. The request should state that the request is pursuant to the Privacy Act of 1974. In the absence of specifying solely the Privacy Act of 1974 and, if the request may be processed under both the Freedom of Information Act and the Privacy Act and the request specifies both or neither act, the procedures under the Privacy Act of 1974 will be employed. The individual will be advised that the procedures of the Privacy Act will be utilized, of the existence and the general effect of the Freedom of Information Act, and the difference between procedures under the two acts (e.g. fees, time limits, access). The request should contain necessary information to verify the identity of the requester (see § 1665.2(b)(2)(vi)). In addition, the requester should include any other information which may assist in the rapid identification of the record for which access is being requested (e.g., maiden name, dates of employment, etc.) as well as any other identifying information contained in and required by SSS Notice of Systems of Records.

(ii) If the request for access follows a prior request under § 1665.1, the same identifying information need not be included in the request for access if a reference is made to that prior correspondence, or a copy of the SSS response to that request is attached.

(iii) If the individual specifically desires a copy of the record, the request should so specify.

(2) *SSS action on request.* A request for access will ordinarily be answered within 10 days, except when the records manager determines that access cannot be afforded in that time, in which case the requester will be informed of the reason for the delay and an estimated date by which the request will be answered. Normally access will be granted within 30 days from the date the request was received by the Selective Service System. At a minimum, the answer to the request for access shall include the following:

(i) A statement that there is a record as requested or a statement that there is not a record in the system of records maintained by SSS;

(ii) A statement as to whether access will be granted only by providing copy of the record through the mail; or the address of the location and the date and time at which the record may be examined. In the event the requester is unable to meet the specified date and time, alternative arrangements may be made with the official specified in §1665.2(b)(1);

(iii) A statement, when appropriate, that examination in person will be the sole means of granting access only when the records manager has determined that it would not unduly impede the requester's right of access;

(iv) The amount of fees charged, if any (see §1665.6) (Fees are applicable only to requests for copies);

(v) The name, title, and telephone number of the SSS official having operational control over the record; and

(vi) The documentation required by SSS to verify the identity of the requester. At a minimum, SSS's verification standards include the following:

(A) *Current or former SSS employees.* Current or former SSS employees requesting access to a record pertaining to them in a system of records maintained by SSS may, in addition to the other requirements of this section, and at the sole discretion of the official having operational control over the record, have his or her identity verified by visual observation. If the current or former SSS employee cannot be so identified by the official having operational control over the records, identification documentation will be required. Employee identification cards, annuitant identification, drivers licenses, or the *employee copy* of any official personnel document in the record are examples of acceptable identification validation.

(B) *Other than current or former SSS employees.* Individuals other than current or former SSS employees requesting access to a record pertaining to them in a system of records maintained by SSS must produce identification documentation of the type described herein, prior to being granted access. The extent of the identification documentation required will depend on the type of record to be accessed. In most cases, identification verification will be accomplished by the presentation of two forms of identification. Any additional requirements are specified in the system notices published pursuant to 5 U.S.C. 552a(e)(4).

(C) *Access granted by mail.* For records to be accessed by mail, the records manager shall, to the extent possible, establish identity by a comparison of signatures in situations where the data in the record is not so sensitive that unauthorized access could cause harm or embarrassment to the individual to whom they pertain. No identification documentation will be required for the disclosure to the requester of information required to be made available to the public by 5 U.S.C. 552. When in the opinion of the records manager the granting of access through the mail could reasonably be expected to result in harm or embarrassment if disclosed to a person other than the individual to whom the record pertains, a notarized statement of identity or some similar assurance of identity will be required.

(D) *Unavailability of identification documentation.* If an individual is unable to produce adequate identification documentation the individual will be required to sign a statement asserting identity and acknowledging that knowingly or willfully seeking or obtaining access to a record about another person under false pretenses may result in a fine of up to $5,000. In addition, depending upon the sensitivity of the records sought to be accessed, the official having operational control over the records may require such further reasonable assurances as may be considered appropriate e.g., statements of other individuals who can attest to the identity of the requester. No verification of identity will be required of individuals seeking access to records which are otherwise available to any person under 5 U.S.C. 552, Freedom of Information Act.

(E) *Access by the parent of a minor, or legal guardian.* A parent of a minor, upon *presenting suitable personal identification,* may access on behalf of the minor *any record pertaining to the minor*

maintained by SSS in a system of records. A legal guardian may similarly act on behalf of an individual declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction. *Absent a court order or consent*, a parent or legal guardian has no absolute right to have access to a record about a child. Minors are not precluded from exercising on their own behalf rights given to them by the Privacy Act.

(F) *Granting access when accompanied by another individual.* When an individual requesting access to his or her record in a system of records maintained by SSS wishes to be accompanied by another individual during the course of the examination of the record, the individual making the request shall submit to the official having operational control of the record, a signed statement authorizing that person access to the record.

(G) *Denial of access for inadequate identification documentation.* If the official having operational control over the records in a system of records maintained by SSS determines that an individual seeking access has not provided sufficient identification documentation to permit access, the official shall consult with the records manager prior to finally denying the individual access.

(H) *Review of decision to deny access.* Whenever the records manager determines, in accordance with the procedures herein, that access cannot be granted the response will also include a statement of the procedures to obtain a review of the decision to deny in accord with § 1665.5.

(vii) *Exceptions.* (A) Nothing in these regulations shall be construed to entitle an individual the right to access to any information compiled in reasonable anticipation of a civil action or proceeding. The mere fact that records in a system of records are frequently the subject of litigation does not bring those systems of records within the scope of this provision. This provision is not intended to preclude access by an individual to the records which are available to that individual under the other processes such as the Freedom of Information Act or the rules of civil procedure.

(B) Within any system of records pertaining to possible violations of the Military Selective Service Act, the identity of or any information pertaining to any individual who provides information relating to a suspected violator will not be revealed to the suspected violator. This exemption is made under the provision of 5 U.S.C. 552a(k)(2).

§ 1665.3 Access to the accounting of disclosures from records.

Rules governing the granting of access to the accounting of disclosure are the same as those for granting accesses to the records (including verification of identity) outlined in § 1665.2.

§ 1665.4 Requests to amend records.

(a) *Requirement for written requests.* Individuals desiring to amend a record that pertains to them in a system of records maintained by SSS must submit their request in writing in accord with the procedures set forth herein. Records not subject to the Privacy Act of 1974 will not be amended in accord with these provisions. However, individuals who believe that such records are inaccurate may bring this to the attention of SSS.

(b) *Procedures.* (1)(i) The requests to amend a record in a system of records shall be addressed to the records manager. Included in the request shall be the name of the system and a brief description of the record proposed for amendment. In the event the request to amend the record is the result of the individual's having gained access to the record in accordance with the provisions concerning access to records as set forth above, copies of previous correspondence between the requester and SSS will serve in lieu of a separate description of the record.

(ii) When the individual's identity has been previously verified pursuant to § 1665.2(b)(2)(vi), further verification of identity is not required as long as the communication does not suggest that a need for verification is present. If the individual's identity has not been previously verified, SSS may require identification validation as described in § 1665.2(b)(2)(vi). Individuals desiring assistance in the preparation of a request to amend a record should

contact the records manager at the address cited above.

(iii) The exact portion of the record the individual seeks to have amended should be clearly indicated. If possible, the proposed alternative language should also be set forth, or at a minimum, the facts which the individual believes are not accurate, relevant, timely, or complete should be set forth with such particularity as to permit SSS not only to understand the individual's basis for the request, but also to make an appropriate amendment to the record.

(iv) The request must also set forth the reasons why the individual believes his record is not accurate, relevant, timely, or complete. In order to avoid the retention by SSS of personal information merely to permit verification of records, the burden of persuading SSS to amend a record will be upon the individual. The individual must furnish sufficient facts to persuade the official in charge of the system of the inaccuracy, irrelevancy, timeliness or incompleteness of the record.

(v) Incomplete or inaccurate requests will not be rejected categorically. The individual will be asked to clarify the request as needed.

(2) *SSS action on the request*. To the extent possible, a decision, upon a request to amend a record will be made within 10 days, (excluding Saturdays, Sundays, and legal Federal holidays). The response reflecting the decisions upon a request for amendment will include the following:

(i) The decision of the Selective Service System whether to grant in whole, or deny any part of the request to amend the record.

(ii) The reasons for determination for any portion of the request which is denied.

(iii) The name and address of the official with whom an appeal of the denial may be lodged.

(iv) The name and address of the official designated to assist, as necessary and upon request of, the individual making the request in preparation of the appeal.

(v) A description of the review of the appeal with SSS (see § 1665.5).

(vi) A description of any other procedures which may be required of the individual in order to process the appeal.

(3) If the nature of the request for the correction of the system of records precludes a decision within 10 days, the individual making the request will be informed within 10 days of the extended date for a decision. Such a decision will be issued as soon as it is reasonably possible, normally within 30 days from the receipt of the request (excluding Saturdays, Sundays, and legal Federal holidays) unless unusual circumstances preclude completing action within that time. If the expected completion date for the decision indicated cannot be met, the individual will be advised of the delay of a revised date when the decision may be expected to be completed.

§ 1665.5 Request for review.

(a) Individuals wishing to request a review of the decision by SSS with regard to any initial request to access or amend a record in accord with the provisions of §§ 1665.2 and 1665.4, should submit the request for review in writing and, to the extent possible, include the information specified in § 1665.5(b). Individuals desiring assistance in the preparation of their request for review should contact the records manager at the address provided herein.

(b) The request for review should contain a brief description of the record involved or in lieu thereof, copies of the correspondence from SSS in which the request to access or to amend was denied and also the reasons why the requester believes that access should be granted or the disputed information amended. The request for review should make reference to the information furnished by the individual in support of his claim and the reasons as required by §§ 1665.2 and 1665.4 set forth by SSS in its decision denying access or amendment. Appeals filed without a complete statement by the requester setting forth the reasons for review will, of course, be processed. However, in order to make the appellate process as meaningful as possible, the requester's disagreement should be set forth in an understandable manner. In order to avoid the unnecessary retention of personal information, SSS reserves the

right to dispose of the material concerning the request to access or amend a record if no request for review in accord with this section is received by SSS within 180 days of the mailing by SSS of its decision upon an initial request. A request for review received after the 180 day period may, at the discretion of the records manager, be treated as an initial request to access or amend a record.

(c) The request for review should be addressed to the Director of Selective Service.

(d) The Director of Selective Service will inform the requester in writing of the decision on the request for review within 20 days (excluding Saturdays, Sundays, and legal federal holidays) from the date of receipt by SSS of the individual's request for review unless the Director extends the 20 days period for good cause. The extension and the reasons therefor will be sent by SSS to the requester within the initial 20 day period. Such extensions should not be routine and should not normally exceed an additional thirty days. If the decision does not grant in full the request for amendment, the notice of the decision will provide a description of the steps the individual may take to obtain judicial review of such a decision, a statement that the individual may file a concise statement with SSS setting forth the individual's reasons for his disagreement with the decision and the procedures for filing such a statement of disagreement. The Director of Selective Service has the authority to determine the *conciseness* of the statement, taking into account the scope of the disagreement and the complexity of the issues. Upon the filing of a proper, concise statement by the individual, any subsequent disclosure of the information in dispute will be clearly noted so that the fact that the record is disputed is apparent, a copy of the concise statement furnished and a concise statement by SSS setting forth its reasons for not making the requested changes, if SSS chooses to file such a statement. A notation of a dispute is required to be made only if an individual informs the agency of his disagreement with SSS's determination in accord with §1665.5(a), (b) and (c). A copy of the individual's statement, and if it chooses, SSS's statement will be sent to any prior transferee of the disputed information who is listed on the accounting required by 5 U.S.C. 552a(c). If the reviewing official determines that the record should be amended in accord with the individual's request, SSS will promptly correct the record, advise the individual, and inform previous recipients if an accounting of the disclosure was made pursuant to 5 U.S.C. 552a(c). The notification of correction pertains to information actually disclosed.

§1665.6 Schedule of fees.

(a) *Prohibitions against charging fees.* Individuals will not be charged for:

(1) The search and review of the record.

(2) Any copies of the record produced as a necessary part of the process of making the record available for access, or

(3) Any copies of the requested record when it has been determined that access can only be accomplished by providing a copy of the record through the mail.

(4) Where a registrant has been charged under the Military Selective Service Act and must defend himself in a criminal prosecution, or where a registrant submits to induction and thereafter brings habeas corpus proceedings to test the validity of his induction, the Selective Service System will furnish to him, or to any person he may designate, one copy of his Selective Service file free of charge.

(b) *Waiver.* The Director of Selective Service may at no charge, provide copies of a record if it is determined the production of the copies is in the interest of the Government.

(c) *Fee schedule and method of payment.* Fees will be charged as provided below except as provided in paragraphs (a) and (b) of this section.

(1) *Duplication of records.* Records will be duplicated at a rate of $.25 per page.

(2) Fees should be paid in full prior to issuance of requested copies. In the event the requester is in arrears for previous requests, copies will not be provided for any subsequent request until the arrears have been paid in full.

(3) Remittance shall be in the form of cash, a personal check or bank draft

drawn on a bank in the United States, or postal money order. Remittances shall be made payable to the order of the Selective Service System and mailed or delivered to the records manager, Selective Service System, Arlington, VA 22209-2425.

(4) A receipt of fees paid will be given upon request.

[47 FR 7224, Feb. 18, 1982; 69 FR 1525, Jan. 9, 2004]

§ 1665.7 Information available to the public or to former employers of registrants.

(a) Each area office maintains a classification record which contains the name, Selective Service number, and the current and past classifications for each person assigned to that board. Information in this record may be inspected at the area office at which it is maintained.

(b) Any compensated employee of the Selective Service System may disclose to the former employer of a registrant who is serving in or who has been discharged from the Armed Forces whether the registrant has or has not been discharged and, if discharged, the date thereof, upon reasonable proof that the registrant left a position in the employ of the person requesting such information in order to serve in the Armed Forces.

(c) Whenever an office referred to in this section is closed, the request for information that otherwise would be submitted to it should be submitted to the National Headquarters, Selective Service System, Arlington, VA 22209-2425.

[47 FR 7224, Feb. 18, 1982; 69 FR 1525, Jan. 9, 2004]

§ 1665.8 Systems of records exempted from certain provisions of this act.

Pursuant to 5 U.S.C. 552a(k)(2), the Selective Service System will not reveal to the suspected violator the informant's name or other identifying information relating to the informant.

[47 FR 24543, June 7, 1982]

PART 1690 [RESERVED]

PART 1697—SALARY OFFSET

Sec.

1697.1 Purpose and scope.
1697.2 Definitions.
1697.3 Applicability.
1697.4 Notice requirements.
1697.5 Hearing.
1697.6 Written decision.
1697.7 Coordinating offset with another Federal agency.
1697.8 Procedures for salary offset.
1697.9 Refunds.
1697.10 Statute of Limitations.
1697.11 Non-waiver of rights.
1697.12 Interest, penalties, and administrative costs.

AUTHORITY: 5 U.S.C. 5514, and 5 CFR part 550, subpart K.

SOURCE: 54 FR 48098, Nov. 21, 1989, unless otherwise noted.

§ 1697.1 Purpose and scope.

(a) This regulation provides procedures for the collection by administrative offset of a federal employee's salary without his/her consent to satisfy certain debts owed to the federal government. These regulations apply to all federal employees who owe debts to the Selective Service System and to current employees of the Selective Service System who owe debts to other federal agencies. This regulation does not apply when the employee consents to recovery from his/her current pay account.

(b) This regulation does not apply to debts or claims arising under:

(1) The Internal Revenue Code of 1954, as amended, 26 U.S.C. 1 *et seq.*;

(2) The Social Security Act, 42 U.S.C. 301 *et seq.:*

(3) The tariff laws of the United States; or

(4) Any case where a collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(c) This regulation does not apply to any adjustment to pay arising out of an employee's selection of coverage or a change in coverage under a federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(d) This regulation does not preclude the compromise, suspension, or termination of collection action where appropriate under the standards implementing the Federal Claims Collection Act 31 U.S.C. 3711 *et seq*. 4 CFR parts 101 through 105 and 45 CFR part 1177.

(e) This regulation does not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774 or 32 U.S.C. 716 or in any way questioning the amount or validity of the debt by submitting a subsequent claim to the General Accounting Office. This regulation does not preclude an employee from requesting a waiver pursuant to other statutory provisions applicable to the particular debt being collected.

(f) Matters not addressed in these regulations should be reviewed in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 *et seq*.

§ 1697.2 Definitions.

For the purposes of the part the following definitions will apply:

Agency means an executive agency as is defined at 5 U.S.C. 105 including the U.S. Postal Service and the U.S. Postal Rate Commission; a military department as defined in 5 U.S.C. 102; an agency or court in the judicial branch, including a court as defined in section 610 of title 28 U.S.C., the District Court for the Northern Mariana Islands, and the Judicial Panel on Multidistrict Litigation; an agency of the legislative branch including the U.S. Senate and House of Representatives; and other independent establishments that are entities of the federal government.

Creditor agency means the agency to which the debt is owed.

Debt means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines, forfeitures (except those arising under the Uniform Code of Military Justice) and all other similar sources.

Director means the Director of Selective Service or his designee.

Disposable pay means the amount that remains from an employee's federal pay after required deductions for social security, federal, state or local income tax, health insurance premiums, retirement contributions, life insurance premiums, federal employment taxes, and any other deductions that are required to be withheld by law.

Employee means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

Hearing official means an individual responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and who renders a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Director of Selective Service.

Paying Agency means the agency that employs the individual who owes the debt and authorizes the payment of his/her current pay.

Salary offset means an administrative offset to collect a debt pursuant to 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his/her consent.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774., 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

§ 1697.3 Applicability.

(a) These regulations are to be followed when:

(1) The Selective Service System is owed a debt by an individual currently employed by another federal agency;

(2) The Selective Service System is owed a debt by an individual who is a current employee of the Selective Service System; or

(3) The Selective Service System employs an individual who owes a debt to another federal agency.

§ 1697.4 Notice requirements.

(a) Deductions shall not be made unless the employee is provided with written notice signed by the Director

of the debt at least 30 days before salary offset commences.

(b) The written notice shall contain:

(1) A statement that the debt is owed and an explanation of its nature and amount;

(2) The agency's intention to collect the debt by deducting from the employee's current disposable pay account;

(3) The amount, frequency, proposed beginning date, and duration of the intended deduction(s);

(4) An explanation of interest, penalties, and administrative charges, including a statement that such charges will be assessed unless excused in accordance with the Federal Claims Collection Standards at 4 CFR 101.1 *et seq.*;

(5) The employee's right to inspect or request and receive a copy of government records relating to the debt;

(6) The opportunity to establish a written schedule for the voluntary repayment of the debt;

(7) The right to a hearing conducted by an impartial hearing official;

(8) The methods and time period for petitioning for hearings;

(9) A statement that the timely filing of a petition for a hearing will stay the commencement of collection proceedings;

(10) A statement that a final decision on the hearing will be issued not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(11) A statement that any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under chapter 75 of title 5 U.S.C., part 752 of title 5, Code of Federal Regulations, or any other applicable statutes or regulations;

(ii) Penalties under the False Claims Act, sections 3729 through 3731 of title 31 U.S.C., or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18 U.S.C., or any other applicable statutory authority.

(12) A statement of other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and

(13) Unless there are contractual or statutory provisions to the contrary, a statement that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.

§ 1697.5 Hearing.

(a) *Request for hearing.* (1) An employee must file a petition for a hearing in accordance with the instructions outlined in the agency's notice to offset.

(2) A hearing may be requested by filing a written petition addressed to the Director of Selective Service stating why the employee disputes the existence or amount of the debt. The petition for a hearing must be received by the Director no later than fifteen (15) calendar days after the date of the notice to offset unless the employee can show good cause for failing to meet the deadline date.

(b) *Hearing procedures.* (1) The hearing will be presided over by an impartial hearing official.

(2) The hearing shall conform to procedures contained in the Federal Claims Collection Standards 4 CFR 102.3(c). The burden shall be on the employee to demonstrate that the existence or the amount of the debt is in error.

§ 1697.6 Written decision.

(a) The hearing official shall issue a written opinion no later than 60 days after the hearing.

(b) The written opinion will include: a statement of the facts presented to demonstrate the nature and origin of the alleged debt; the hearing official's analysis, findings and conclusions; the amount and validity of the debt, and the repayment schedule, if applicable.

§ 1697.7 Coordinating offset with another federal agency.

(a) *The Selective Service System as the creditor agency.* (1) When the Director determines that an employee of a federal agency owes a delinquent debt to the Selective Service System, the Director shall as appropriate:

(i) Arrange for a hearing upon the proper petitioning by the employee;

(ii) Certify in writing to the paying agency that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date the government's right to collect the debt accrued, and that Selective Service System regulations for salary offset have been approved by the Office of Personnel Management;

(iii) If collection must be made in installments, the Director must advise the paying agency of the amount or percentage of disposable pay to be collected in each installment;

(iv) Advise the paying agency of the actions taken under 5 U.S.C. 5514(b) and provide the dates on which action was taken unless the employee has consented to salary offset in writing or signed a statement acknowledging receipt of procedures required by law. The written consent or acknowledgement must be sent to the paying agency;

(v) If the employee is in the process of separating, the Selective Service System must submit its debt claim to the paying agency as provided in this part. The paying agency must certify any amounts already collected, notify the employee and send a copy of the certification and notice of the employee's separation to the creditor agency. If the creditor agency is aware that the employee is entitled to Civil Service Retirement and Disability Fund or similar payments, it must certify to the agency responsible for making such payments the amount of the debt and that the provisions of this part have been followed; and

(vi) If the employee has already separated and all payments due from the paying agency have been paid, the Director may request, unless otherwise prohibited, that money payable to the employee from the Civil Service Retirement and Disability Fund or other similar funds be collected by administrative offset as provided under 5 CFR 831.1801 or other provisions of law or regulation.

(b) *The Selective Service System as the paying agency*. (1) Upon receipt of a properly certified debt claim from another agency, deductions will be scheduled to begin at the next established pay interval. The employee must receive written notice that the Selective Service System has received a certified debt claim from the creditor agency, the amount of the debt, the date salary offset will begin, and the amount of the deduction(s). The Selective Service System shall not review the merits of the creditor agency's determination of the validity or the amount of the certified claim.

(2) If the employee transfers to another agency after the creditor agency has submitted its debt claim to the Selective Service System and before the debt is collected completely, the Selective Service System must certify the total amount collected. One copy of the certification must be furnished to the employee. A copy must be furnished the creditor agency with notice of the employee's transfer.

§ 1697.8 Procedures for salary offset.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in the Director's notice of intention to offset as provided in § 1697.4. Debts will be collected in one lump sum where possible. If the employee is financially unable to pay in one lum sum, collection must be made in installments.

(b) Debts will be collected by deduction at officially established pay intervals from an employee's current pay account unless alternative arrangements for repayment are made with the approval of the Director.

(c) Installment deductions will be made over a period not greater than the anticipated period of employment. The size of installment deductions must bear a reasonable relationship to the size of the debt and the employee's ability to pay. The deduction for the pay intervals for any period must not exceed 15% of disposable pay unless the employee has agreed in writing to a deduction of a greater amount.

(d) Unliquidated debts may be offset against any financial payment due to a separated employee including but not limited to final salary or leave payment in accordance with 31 U.S.C. 3716.

§ 1697.9 Refunds.

(a) The Selective Service System will refund promptly any amounts deducted

to satisfy debts owed to the Selective Service System when the debt is waived, found not owed to the Selective Service System, or when directed by an administrative or judicial order.

(b) The creditor agency will promptly return any amounts deducted by the Selective Service System to satisfy debts owed to the creditor agency when the debt is waived, found not owed, or when directed by an administrative or judicial order.

(c) Unless required by law, refunds under this subsection shall not bear interest.

§ 1697.10 Statute of Limitations.

If a debt has been outstanding for more than 10 years after the agency's right to collect the debt first accrued, the agency may not collect by salary offset unless facts material to the government's right to collect were not known and could not reasonably have been known by the official or officials who were charged with the responsibility for discovery and collection of such debts.

§ 1697.11 Non-waiver of rights.

An employee's involuntary payment of all or any part of a debt collected under these regulations will not be construed as a waiver of any rights that employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutes or contract(s) to the contrary.

§ 1697.12 Interest, penalties, and administrative costs.

Charges may be assessed for interest, penalties, and administrative costs in accordance with the Federal Claims Collection Standards, 4 CFR 102.13

PART 1698—ADVISORY OPINIONS

Sec.

1698.1 Purpose.
1698.2 Requests for advisory opinions.
1698.3 Requests for additional information.
1698.4 Confidentiality of advisory opinions and requests for advisory opinions.
1698.5 Basis for advisory opinions.
1698.6 Issuance of advisory opinions.
1698.7 Reconsideration of advisory opinion.
1698.8 Effect of advisory opinions.

AUTHORITY: Military Selective Service Act, 50 U.S.C. 451 *et seq.*; E.O. 11623.

SOURCE: 52 FR 24460, July 1, 1987, unless otherwise noted.

§ 1698.1 Purpose.

The provisions of this part prescribe the procedures for requesting and processing requests for advisory opinions relative to a named individual's liability for registration under the Military Selective Service Act (MSSA), 50 U.S.C. App. 451 *et seq.*

§ 1698.2 Requests for advisory opinions.

(a) Any male born after December 31, 1959 who has attained 18 years of age may request an advisory opinion as to his liability to register under MSSA. A parent or guardian of such person who is unable to make a request for an advisory opinion may request an advisory opinion for him. Any Federal, state or municipal governmental agency may request an advisory opinion as to the liability of any male person born after December 31, 1959 who has attained 18 years of age to register under MSSA.

(b) Requests for advisory opinions shall be in writing and addressed to Director of Selective Service, ATTN: SIL, P.O. Box 94638, Palatine, IL 60094–4638. With respect to the person concerning whom an advisory opinion is requested, the following should be furnished: full name, address, date of birth, Social Security Account Number, basis for the opinion that the registration requirement is inapplicable to him, and, if applicable, basis for his assertion that his failure to register ". . . was not a knowing and willful failure to register."

[52 FR 24460, July 1, 1987, as amended at 65 FR 47670, Aug. 3, 2000]

§ 1698.3 Requests for additional information.

(a) The Director may request additional appropriate information from the requester for an advisory opinion.

(b) The Director will forward a copy of the request by a Federal, state or municipal governmental agency for an advisory opinion to the person to whom the request pertains and invite his comments on it.

§ 1698.4 Confidentiality of advisory opinions and requests for advisory opinions.

Advisory opinions will be confidential except as provided in § 1698.6. Requests for advisory opinions will be confidential except as provided in § 1698.3.

§ 1698.5 Basis of advisory opinions.

Advisory opinions will be based on the request therefor, responses to requests for information, and matters of which the Director can take official notice.

§ 1698.6 Issuance of advisory opinions.

A copy of the advisory opinion will be furnished, without charge, to the requester therefor and to the individual to whom it pertains. A copy of an advisory opinion will be furnished, without charge, to any Federal, state, or municipal governmental agency upon request.

§ 1698.7 Reconsideration of advisory opinions.

Whenever the Director has reason to believe that there is substantial error in the information on which an advisory opinion is based, he may reconsider it and issue an appropriate revised opinion.

§ 1698.8 Effect of advisory opinion.

The Selective Service System will not take action with respect to any person concerning whom the Director has issued an advisory opinion insonsistent with that advisory opinion.

PART 1699—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY SELECTIVE SERVICE SYSTEM

Sec.

1699.101 Purpose.
1699.102 Application.
1699.103 Definitions.
1699.104–1699.109 [Reserved]
1699.110 Self-evaluation.
1699.111 Notice.
1699.112–1699.129 [Reserved]
1699.130 General prohibitions against discrimination.
1699.131–1699.139 [Reserved]
1699.140 Employment.
1699.141–1699.148 [Reserved]
1699.149 Program accessibility: discrimination prohibited.
1699.150 Program accessibility: existing facilities.
1699.151 Program accessibility: new construction and alterations.
1699.152–1699.159 [Reserved]
1699.160 Communications.
1699.161–1699.169 [Reserved]
1699.170 Compliance procedure.
1699.171–1699.999 [Reserved]

AUTHORITY: 9 U.S.C. 794.

SOURCE: 50 FR 35219, Aug. 30, 1985, unless otherwise noted.

§ 1699.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1699.102 Application.

This part applies to all programs or activities conducted by the agency.

§ 1699.103 Definitions.

For purposes of this part, the term—

Agency means the Selective Service System.

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf

persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Handicapped person means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such disease and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addition and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (l) of this definition but is treated by the agency as having such an impairment.

Qualified handicapped person means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, a handicapped person who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a handicapped person who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617), and the Rehabilitation, Comprehensive Services, and Development Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 1699.104–1699.109 [Reserved]

§ 1699.110 Self-evaluation.

(a) The agency shall, within one year of the effective date of this part, evaluate its current policies and practices,

and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 1699.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and its regulation.

§§ 1699.112–1699.129 [Reserved]

§ 1699.130 General prohibitions against discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless such action is necessary to provide qualified handicapped persons with aids, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified handicapped persons to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to handicapped persons.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives

of a program or activity with respect to handicapped persons.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified handicapped persons to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified handicapped persons to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified handicapped persons to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped person is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

§§ 1699.131–1699.139 [Reserved]

§ 1699.140 Employment.

No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 1699.141–1699.148 [Reserved]

§ 1699.149 Program accessibility: discrimination prohibited.

Except as otherwise provided in § 1699.150, no qualified handicapped persons shall, because the agency's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subject to discrimination under any program or activity conducted by the agency.

§ 1699.150 Program accessibility: existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by handicapped persons;

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 1699.150(a) would result in such alterations or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making

its programs or activities readily accessible to and usable by handicapped persons. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4141 through 4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified handicapped persons in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in the development of the transition by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, at the time, identify steps that will be taken during each year of the transition period; and

(4) Indicate the officials responsible for implementation of the plan.

§ 1699.151 Program accessibility: new construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by handcapped persons. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151 through 4157), as established in 41 CFR 101–19.600 to 14–19.607, apply to buildings covered by this section.

§§ 1699.152–1699.159 [Reserved]

§ 1699.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aid where necessary to afford a handicapped person an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the handicapped person.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's), or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signs at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities.

The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §1699.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, handicapped persons receive the benefits and services of the program or activity.

§§ 1699.161–1699.169 [Reserved]

§ 1699.170 Compliance procedure.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Associate Director for Administration.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 through 4157), or section 502 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 792), is not readily accessible and usable to handicapped persons.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusion of law;

(2) A description of a remedy of each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §1699.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Director of Selective Service.

(j) The agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the agency determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

§§ 1699.171–1699.999 [Reserved]

CHAPTER XVII—OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

Part		*Page*
1700	Procedures for disclosure of records pursuant to the Freedom of Information Act	375
1701	Administration of records under the Privacy Act of 1974	382
1702	Procedures governing the acceptance of service of process	402
1703	Production of ODNI information or material in proceedings before Federal, State, local or other government entity of competent jurisdiction	404

PART 1700—PROCEDURES FOR DISCLOSURE OF RECORDS PURSUANT TO THE FREEDOM OF INFORMATION ACT

Sec.
1700.1 Authority and purpose.
1700.2 Definitions.
1700.3 Contact for general information and requests.
1700.4 Preliminary information.
1700.5 Requirements as to form and content.
1700.6 Fees for records services.
1700.7 Processing of requests for records.
1700.8 Action on the request.
1700.9 Payment of fees, notification of decision, and right of appeal.
1700.10 Procedures for business information.
1700.11 Procedures for information concerning other persons.
1700.12 Requests for expedited processing.
1700.13 Right to appeal and appeal procedures.
1700.14 Action by appeals authority.

AUTHORITY: 5 U.S.C. 552, 50 U.S.C. 401–442; Pub. L. 108–458, 118 Stat. 3638.

SOURCE: 72 FR 45894, Aug. 16, 2007, unless otherwise noted.

§ 1700.1 Authority and purpose.

(a) *Authority*. This part is issued under the authority of and in order to implement the Freedom of Information Act, as amended, 5 U.S.C. 552; the National Security Act of 1947, as amended, 50 U.S.C. 401–442; and the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108–458, 118 Stat. 3638.

(b) *Purpose in general*. This part prescribes procedures for:

(1) ODNI administration of the FOIA;

(2) Requesting records pursuant to the FOIA; and

(3) Filing an administrative appeal of an initial adverse decision under the FOIA.

§ 1700.2 Definitions.

For purposes of this Part, the following terms have the meanings indicated:

(a) *Days* means calendar days when ODNI is operating and specifically excludes Saturdays, Sundays, and legal public holidays;

(b) *Direct costs* means those expenditures which ODNI actually incurs in the processing of a FOIA request; it does not include overhead factors such as space;

(c) *Pages* means paper copies of standard office size or the dollar value equivalent in other media;

(d) *Reproduction* means generation of a copy of a requested record in a form appropriate for release;

(e) *Review* means all time expended in examining a record to determine whether any portion must be withheld pursuant to law and in effecting any required deletions but excludes personnel hours expended in resolving general legal or policy issues; it also means personnel hours of professional time;

(f) *Search* means all time expended in looking for and retrieving material that may be responsive to a request utilizing available paper and electronic indices and finding aids; it also means personnel hours of professional time or the dollar value equivalent in computer searches;

(g) *Expression of interest* means a written or electronic communication submitted by any person requesting information on or concerning the FOIA program, the availability of documents from ODNI, or both;

(h) *Fees* means those direct costs which may be assessed a requester considering the categories established by the FOIA; requesters should submit information to assist the ODNI in determining the proper fee category and the ODNI may draw reasonable inferences from the identity and activities of the requester in making such determinations; the fee categories include:

(1) *Commercial use request:* A request in which the disclosure sought is primarily in the commercial interest of the requester and which furthers such commercial, trade, income or profit interests;

(2) *Educational institution:* A preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program of scholarly research. To be in this category, a requester must show that the request is authorized by and is made

under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

(3) *Noncommercial scientific institution:* An institution that is not operated on a commercial basis, as that term is defined in paragraph (h)(1) of this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

(4) *Representative of the news media:* An individual actively gathering news for an entity that is organized and operated to publish and broadcast news to the public and pursuant to the entity's news dissemination function and not its commercial interests; the term "news" means information which concerns current events, would be of current interest to the general public, would enhance the public understanding of the operations or activities of the U.S. Government, and is in fact disseminated to a significant element of the public at minimal cost; freelance journalists are included in this definition if they provide sufficient evidence to justify an expectation of publication through such an organization, even though not actually employed by it; a publication contract or prior publication record is relevant to such status;

(5) *All other:* A request from an individual not within paragraphs (h)(1), (2), (3), or (4) of this section;

(i) *Freedom of Information Act*, "FOIA," or "the Act" means the statute as codified at 5 U.S.C. 552;

(j) *ODNI* means the Office of the Director of National Intelligence and its component organizations. It does not include other members of the Intelligence Community as defined in 50 U.S.C. 401a, or other federal entities subsequently designated in accordance with this authority, unless specifically designated as included in this part or in the notice of a system of records;

(k) *Potential requester* means a person, organization, or other entity who submits an expression of interest.

§ 1700.3 Contact for general information and requests.

For general information on this Part, to inquire about the FOIA program at ODNI, or to file a FOIA request (or expression of interest), please direct communication in writing to the Office of the Director of National Intelligence, Chief FOIA Officer c/o Director, Information Management Office, Washington, DC 20511 by mail or by facsimile at (703) 482–2144. FOIA requests can also be submitted by electronic mail to *FOIA @ dni.gov*. For general information or status information on pending cases only, call the ODNI FOIA Customer Service Center at (571) 204–4774.

§ 1700.4 Preliminary information.

Members of the public shall address all communications to the point of contact specified in § 1700.3 and clearly delineate the communication as a request under the FOIA. ODNI staff who receive a FOIA request shall expeditiously forward the request to the Director, Information Management Office (IMO). Requests and appeals (as well as referrals and consultations) received from FOIA requesters who owe outstanding fees for information services at this or other federal agencies will not be accepted and action on all pending requests shall be terminated in such circumstances.

§ 1700.5 Requirements as to form and content.

(a) *Required information*. No particular form is required. A request must reasonably describe the record or records being sought and be submitted in accordance with this regulation. Documents must be described sufficiently to enable a staff member familiar with the subject to locate the documents with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and the subject matter of the record. As a general rule, the more specific you are about the records or type of records

that you want, the more likely it will be that the IMO will be able to locate records responsive to your request. The IMO will provide you an opportunity to discuss your request with it so that you may modify your request to meet the requirements of this section. If after having been asked to do so you do not provide the IMO with information sufficient to enable it to locate responsive records your request will be closed.

(b) *Additional information for fee determination*. A requester must provide sufficient personally identifying information to allow staff to determine the appropriate fee category and to contact the requester easily.

§ 1700.6 Fees for records services.

(a) *In general*. Search, review, and reproduction fees will be charged in accordance with the provisions below relating to schedule, limitations, and category of requester. Applicable fees will be due even if a subsequent search locates no responsive records or some or all of the responsive records must be denied under one or more of the exemptions of the FOIA.

(b) *Fee waiver requests*. Records will be furnished without charge or at a reduced rate when ODNI determines:

(1) As a matter of administrative discretion, the interest of the United States Government would be served, *or*

(2) It is in the public interest to provide responsive records because the disclosure is likely to contribute *significantly* to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester.

(c) *Fee waiver appeals*. Denials of requests for fee waivers or reductions may be appealed to the Director of the Intelligence Staff, or his functional equivalent, through the ODNI Chief FOIA Officer. A requester is encouraged to provide any explanation or argument as to how his or her request satisfies the requirements of this regulation and the Act. See § 1700.14 for further details on appeals.

(d) *Time for fee waiver requests and appeals*. Appeals should be resolved prior to the initiation of processing and the incurring of costs. However, fee waiver requests will be accepted at any time prior to an agency decision regarding the request, except when processing has been initiated, in which case the requester must agree to be responsible for costs in the event of an adverse administrative or judicial decision.

(e) *Agreement to pay fees*. If you make a FOIA request, it shall be considered a firm commitment by you to pay all applicable fees chargeable under this regulation, up to and including the amount of $25.00, unless you ask for a waiver of fees. When making a request, you may specify a willingness to pay a greater or lesser amount.

(f) *Advance payment*. The ODNI may require an advance payment of up to 100 percent of the estimated fees when projected fees exceed $250.00, not including charges associated with the first 100 pages of production and two hours of search (when applicable), or when the requester previously failed to pay fees in a timely fashion, for fees of any amount. ODNI will hold in abeyance for 45 days those requests where advance payment has been requested.

(g) *Schedule of fees*—(1) *In general*. The schedule of fees for services performed in responding to requests for records is as follows:

Personnel Search and Review		
Clerical/Technical	Quarter hour	$5.00
Professional/Supervisory	Quarter hour	10.00
Manager/Senior Professional	Quarter hour	18.00

Computer Search and Production		
Search (on-line)	Flat rate	10.00
Search (off-line)	Flat rate	30.00
Other activity	Per minute	10.00
Tapes (mainframe cassette)	Each	9.00

Tapes (mainframe cartridge)	Each	9.00
Tapes (mainframe reel)	Each	20.00
Tapes (PC 9mm)	Each	25.00
Diskette (3.5″)	Each	4.00
CD (bulk recorded)	Each	10.00
CD (recordable)	Each	20.00
Telecommunications	Per minute	.50
Paper (mainframe printer)	Per page	.10
Paper (PC b&w laser printer)	Per page	.10
Paper (PC color printer)	Per page	1.00
Paper Production		
Photocopy (standard or legal)	Per page	.10
Microfiche	Per frame	.20
Pre-printed (if available)	Per 100 pages	5.00
Published (if available)	Per item	NTIS

(2) *Application of schedule.* Personnel search time includes time expended in manual paper records searches, indices searches, review of computer search results for relevance, and personal computer system searches. In any event where the actual cost to ODNI of a particular item is less than the above schedule (e.g., a large production run of a document resulting in a cost less than $5.00 per hundred pages), then the actual lesser cost will be charged.

(3) *Other services.* For all other types of output, production, or reproduction (e.g., photographs, maps, or published reports), ODNI will charge actual cost or amounts authorized by statute. Determinations of actual cost shall include the commercial cost of the media, the personnel time expended in making the item to be released, and an allocated cost of the equipment used in making the item, or, if the production is effected by a commercial service, then that charge shall be deemed the actual cost for purposes of this regulation.

(h) *Limitations on collection of fees*—(1) *In general.* No fees will be charged if the cost of collecting the fee is equal to or greater than the fee itself. That cost includes the administrative costs to ODNI of billing, receiving, recording, and processing the fee for deposit to the Treasury Department and, as of the date of these regulations, is deemed to be $10.00.

(i) *Fee categories.* There are four categories of FOIA requesters for fee purposes: Commercial use requesters, educational and non-commercial scientific institution requesters, representatives of the news media requesters, and all other requesters. The categories are defined in § 1700.2 and applicable fees will be assessed as follows:

(1) Commercial use requesters: Charges which recover the full direct costs of searching for, reviewing, and duplicating responsive records (if any);

(2) Educational and non-commercial scientific institution requesters, and representatives of the news media requesters: Only charges for reproduction beyond the first 100 pages;

(3) All other requesters: Charges which recover the full direct cost of searching for and reproducing responsive records (if any) beyond the first 100 pages of reproduction and the first two hours of search time which will be furnished without charge.

(j) *Associated requests.* If it appears a requester or a group of requesters acting in concert have requested portions of an apparently unitary request for the purpose of avoiding the assessment of fees, ODNI may aggregate any such requests and charge accordingly. Requests from multiple requesters will not be aggregated without clear evidence. ODNI will not aggregate multiple unrelated requests.

§ 1700.7 Processing of requests for records.

(a) *In general.* Requests meeting the requirements of § 1700.3 through § 1700.6 shall be accepted as formal requests and processed under the FOIA and this

Part. A request will not be considered received until it reaches the IMO. Ordinarily upon its receipt a request will be date-stamped as received. It is this date that establishes when your request is received for administrative purposes, not any earlier date such as the date of the letter or its postmark date. For the quickest possible handling, both the request letter and the envelope should be marked "Freedom of Information Act Request."

(b) *Electronic Reading Room*. ODNI maintains an online FOIA Reading Room on the ODNI Web site which contains the information that the FOIA requires be routinely made available for public inspection and copying as well as other information determined to be of general public interest.

(c) *Confirming the existence of certain documents*. In processing a request, ODNI shall decline to confirm or deny the existence of responsive records whenever the fact of their existence or nonexistence is itself classified under Executive Order 12,958 and its amending orders, reveals intelligence sources and methods protected pursuant to 50 U.S.C. 403–1(i)(1), or would be an invasion of the personal privacy of third parties. In such circumstances, ODNI, in its final written response, shall so inform the requester and advise of his or her right to file an administrative appeal.

(d) *Time for response*. Whenever the statutory time limits for processing a request cannot be met because of "unusual circumstances," as defined in the FOIA, and the component determines to extend the time limits on that basis, ODNI will inform the requester in writing and advise the requester of the right to narrow the scope of his or her request or agree to an alternative timeframe for processing.

(e) *Multitrack processing*. ODNI may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request, including through limits based on the number of pages involved. ODNI may provide requesters in its slower track with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of its faster track.

§ 1700.8 Action on the request.

(a) *Initial action for access*. ODNI staff identified to search for records pursuant to a FOIA request shall search all relevant record systems within their cognizance as of the date the search is commenced. A staff member tasked to conduct a search shall:

(1) Determine whether records exist;

(2) Determine whether and to what extent any FOIA exemptions apply;

(3) Make recommendations for withholding records or portions of records that originated in the staff member's organization and for which there is a legal basis for denial or make a recommendation in accordance with § 1700.7(c). In making recommendations, ODNI staff shall be guided by the procedures specified in § 1700.10 regarding confidential commercial information and § 1700.11 regarding third party information; and

(4) Forward to the Director, IMO, all records responsive to the request.

(b) *Referrals and consultations*. ODNI records containing information originated by other ODNI components shall be forwarded to those entities for action in accordance with paragraph (a) of this section and returned. Records originated by other federal agencies or ODNI records containing other federal agency information shall be forwarded to such agencies for processing and direct response to the requester or for consultation and return to the ODNI. ODNI will notify the requester if it makes a referral for direct response.

(c) *Release of information*. When the Director, IMO (or Appeals Authority) makes a final determination to release records, the records will be forwarded to the requester in an appropriate format promptly upon compliance with any preliminary procedural requirements, including payment of fees. If any portion of a record is withheld initially or upon appeal, the Director, IMO (or Appeals Authority) will provide a written response that shall include, at a minimum:

(1) The basis for the withholding, citing the specific statutory exemption or exemptions invoked under the FOIA with respect to each portion withheld,

unless documents are withheld in accordance with § 1700.7(c);

(2) When the withholding is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order;

(3) When the denial is based on 5 U.S.C. 552(b)(3), the statute relied upon; and

(4) Notice to the requester of the right to judicial review.

§ 1700.9 Payment of fees, notification of decision, and right of appeal.

(a) *Fees in general.* Fees collected under this part do not accrue to ODNI and shall be deposited immediately to the general account of the United States Treasury.

(b) *Notification of decision.* Upon completion of all required review and the receipt of accrued fees (or promise to pay such fees), ODNI will promptly inform the requester in writing of those records or portions of records that will be released and those that will be denied.

(1) For documents to be released, ODNI will provide paper copies or documents on electronic media, if requested and available;

(2) For documents not released or partially released, ODNI shall explain the reasons for any denial and give notice of a right of administrative appeal. For partial releases, redactions will be made to ensure requesters can see the placement and general length of redactions with the applicable exemption or exemptions clearly with respect to each redaction.

§ 1700.10 Procedures for business information.

(a) *In general.* Business information obtained by ODNI from a submitter shall not be disclosed pursuant to a FOIA request except in accordance with this section. For purposes of this section, the following definitions apply:

(1) *Business information* means commercial or financial information in which a legal entity has a recognized property interest;

(2) *Confidential commercial information* means such business information provided to the United States Government by a submitter which is reasonably believed to contain information exempt from release under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm; and

(3) *Submitter* means any person or entity who provides confidential commercial information to the United States Government; it includes, but is not limited to, corporations, businesses (however organized), State governments, and foreign governments.

(b) *Designation of confidential commercial information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be confidential commercial information and hence protected from required disclosure pursuant to Exemption 4 of the FOIA. Such designations shall expire 10 years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(c) *Process in event of FOIA request*—(1) *Notice to submitters.* ODNI shall provide a submitter with prompt written notice of receipt of a FOIA request encompassing business information whenever:

(i) The submitter has in good faith designated the information as confidential commercial information, or

(ii) ODNI staff believe that disclosure of the information could reasonably be expected to cause substantial competitive harm, and

(iii) The information was submitted within the last 10 years unless the submitter requested and provided acceptable justification for a specific notice period of greater duration.

(2) *Form of notice.* Communication to a submitter of commercial information shall either describe the exact nature of the confidential commercial information at issue or provide copies of the responsive records containing such information.

(3) *Response by submitter.* (i) Within seven days of the notice described in

paragraph (c)(1), all claims of confidentiality by a submitter must be supported by a detailed statement of any objection to disclosure. Such statement shall:

(A) Affirm that the information has not been disclosed to the public;

(B) Explain why the information is a trade secret or confidential commercial information;

(C) Explain in detail how disclosure of the information will result in substantial competitive harm;

(D) Affirm that the submitter will provide ODNI and the Department of Justice with such litigation support as requested; and

(E) Be certified by an officer authorized to legally bind the submitter.

(ii) It should be noted that information provided by a submitter pursuant to this provision may itself be subject to disclosure under the FOIA.

(4) *Decision and notice of intent to disclose.* (i) ODNI shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to its final determination. If the Director, IMO, decides to disclose a document over the objection of a submitter, ODNI shall provide the submitter a written notice that shall include:

(A) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(B) A description of the information to be disclosed; and

(C) A specified disclosure date that is seven days after the date of the instant notice.

(ii) When notice is given to a submitter under this section, the ODNI shall also notify the requester and, if the ODNI notifies a submitter that it intends to disclose information, then the requester shall be notified also and given the proposed date for disclosure.

(5) *Notice of FOIA lawsuit.* If a requester initiates legal action seeking to compel disclosure of information asserted to be within the scope of this section, ODNI shall promptly notify the submitter. The submitter, as specified above, shall provide such litigation assistance as required by ODNI and the Department of Justice.

(6) *Exceptions to notice requirement.* The notice requirements of this section shall not apply if ODNI determines that:

(i) The information should not be disclosed, pursuant to Exemption 4 and/or any other exemption of the FOIA;

(ii) The information has been published lawfully or has been officially made available to the public;

(iii) The disclosure of the information is otherwise required by law or federal regulation; or

(iv) The designation made by the submitter under this section appears frivolous, except that, in such a case, the ODNI will, within a reasonable time prior to the specified disclosure date, give the submitter written notice of any final decision to disclose the information.

§ 1700.11 Procedures for information concerning other persons.

(a) *In general.* Personal information concerning individuals other than the requester shall not be disclosed under the FOIA if the proposed release would constitute a clearly unwarranted invasion of personal privacy, or, if the information was compiled for law enforcement purposes, it could reasonably be expected to constitute an unwarranted invasion of personal privacy. *See* 5 U.S.C. 552 (b)(6) and (b)(7)(C). For purposes of this section, the following definitions apply:

(1) Personal information means any information about an individual that is not a matter of public record, or easily discernible to the public, or protected from disclosure because of the implications that arise from Government possession of such information.

(2) Public interest means the public interest in understanding the operations and activities of the United States Government and not simply any matter that might be of general interest to the requester or members of the public.

(b) *Determination to be made.* In making the required determination under this section and pursuant to Exemptions 6 and 7(C) of the FOIA, ODNI will balance the privacy interests that would be compromised by disclosure against the public interest in release of the requested information.

(c) *Otherwise.* A requester seeking information on a third party is encouraged to provide a signed affidavit or declaration from the third party consenting to disclosure of the information. However, any such statements shall be narrowly construed and the Director, IMO, in the exercise of that officer's discretion and administrative authority, may seek clarification from the third party prior to any or all releases.

§ 1700.12 Requests for expedited processing.

(a) *In general.* All requests will be handled in the order received on a strictly "first-in, first-out" basis. Exceptions to this rule will only be made in accordance with the following procedures.

(b) *Procedure.* A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for requesting expedited processing. Within ten calendar days of its receipt of a request for expedited processing, the IMO shall decide whether to grant it and shall notify the requester of the decision. If a request for expedited processing is granted, the request shall be given priority and shall be processed as soon as practicable.

(c) *Determination to be made:* Requests and appeals will be taken out of order and given expedited processing treatment whenever it is determined that they involve:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) An urgency to inform the public concerning an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information.

§ 1700.13 Right to appeal and appeal procedures.

(a) *Right to appeal.* Individuals who disagree with a decision not to produce a document or parts of a document, to deny a fee category request, to deny a request for a fee waiver or fee reduction, to deny expedited processing, or a decision regarding a fee estimate or a determination that no records exist, should submit a written request for review to the Chief FOIA Officer c/o Director, Information Management Office, Office of the Director of National Intelligence, Washington, DC 20511. The words "FOIA APPEAL" should be written on the letter and the envelope. The appeal must be signed by the individual or his legal counsel.

(b) *Requirements as to time and form.* Appeals of adverse decisions must be received within 45 days of the date of the ODNI's initial decision. Requesters should include a statement of the reasons supporting the request for reversal of the initial decision.

(c) *Exceptions.* No appeal shall be accepted if the requester has outstanding fees for information services at this or another federal agency. In addition, no appeal shall be accepted if the information in question has been the subject of an administrative review within the previous two years or is the subject of pending litigation in the Federal courts.

§ 1700.14 Action by appeals authority.

(a) The Director of the Intelligence Staff, after consultation with any ODNI component organization involved in the initial decision as well as with the Office of General Counsel, will make a final determination on the appeal. Appeals of denials of requests for expedited processing shall be acted on expeditiously.

(b) The Director, IMO, will ordinarily be the initial deciding official on FOIA requests to the ODNI. However, in the event the Director of the Intelligence Staff makes an initial decision that is later appealed, the Principal Deputy Director for National Intelligence will decide the appeal in accordance with the procedures in this section.

PART 1701—ADMINISTRATION OF RECORDS UNDER THE PRIVACY ACT OF 1974

Subpart A—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

Sec.

1701.1 Purpose, scope, applicability.
1701.2 Definitions.

1701.3 Contact for general information and requests.
1701.4 Privacy Act responsibilities/policy.
1701.5 Collection and maintenance of records.
1701.6 Disclosure of records/policy.
1701.7 Requests for notification of and access to records.
1701.8 Requests to amend or correct records.
1701.9 Requests for an accounting of record disclosures.
1701.10 ODNI responsibility for responding to access requests.
1701.11 ODNI responsibility for responding to requests for amendment or correction.
1701.12 ODNI responsibility for responding to requests for accounting.
1701.13 Special procedures for medical/psychiatric/psychological testing records.
1701.14 Appeals.
1701.15 Fees.
1701.16 Contractors.
1701.17 Standards of conduct.

Subpart B—Exemption of Records Systems Under the Privacy Act

1701.20 Exemption policies.
1701.21 Exemption of National Counterterrorism Center (NCTC) systems of records.
1701.22 Exemption of Office of the National Counterintelligence Executive (ONCIX) systems of records.
1701.23 Exemption of Office of Inspector General (OIG) systems of records.
1701.24 Exemption of Office of the Director of National Intelligence (ODNI) systems of records.

Subpart C—Routine Uses Applicable to More Than One ODNI System of Records

1701.30 Policy and applicability.
1701.31 General routine uses.

AUTHORITY: 50 U.S.C. 401–442; 5 U.S.C. 552a.

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Subpart A—Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974

§ 1701.1 Purpose, scope, applicability.

(a) *Purpose*. This subpart establishes the policies and procedures the Office of the Director of National Intelligence (ODNI) will follow in implementing the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, as amended. This subpart sets forth the procedures ODNI must follow in collecting and maintaining personal information from or about individuals, as well as procedures by which individuals may request to access or amend records about themselves and request an accounting of disclosures of those records by the ODNI. In addition, this subpart details parameters for disclosing personally identifiable information to persons other than the subject of a record.

(b) *Scope*. The provisions of this subpart apply to all records in systems of records maintained by ODNI directorates, centers, mission managers and other sub-organizations [hereinafter called "components"] that are retrieved by an individual's name or personal identifier.

(c) *Applicability*. This subpart governs the following individuals and entities:

(1) All ODNI staff and components must comply with this subpart. The terms "staff" and "component" are defined in § 1701.2.

(2) Unless specifically exempted, this subpart also applies to advisory committees and councils within the meaning of the Federal Advisory Committee Act (FACA) which provide advice to: Any official or component of ODNI; or the President, and for which ODNI has been delegated responsibility for providing service.

(d) *Relation to Freedom of Information Act*. The ODNI shall provide a subject individual under this subpart all records which are otherwise accessible to such individual under the provisions of the Freedom of Information Act, 5 U.S.C. 552.

§ 1701.2 Definitions.

For purposes of this subpart, the following terms have the meanings indicated:

Access means making a record available to a subject individual.

Act means the Privacy Act of 1974.

Agency means the ODNI or any of its components.

Component means any directorate, mission manager, or other sub-organization in the ODNI or reporting to the Director, that has been designated or established in the ODNI pursuant to Section 103 of the National Security Act of 1947, as amended, including the National Counterterrorism Center (NCTC), the National Counterproliferation Center (NCPC) and the Office of

the National Counterintelligence Executive (ONCIX), or such other offices and officials as may be established by law or as the Director may establish or designate in the ODNI, for example, the Program Manager, Information Sharing Environment (ISE) and the Inspector General (IG).

Disclosure means making a record about an individual available to or releasing it to another party.

FOIA means the Freedom of Information Act.

Individual, when used in connection with the Privacy Act, means a living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. It does not include sole proprietorships, partnerships, or corporations.

Information means information about an individual and includes, but is not limited to, vital statistics; race, sex, or other physical characteristics; earnings information; professional fees paid to an individual and other financial information; benefit data or claims information; the Social Security number, employer identification number, or other individual identifier; address; phone number; medical information; and information about marital, family or other personal relationships.

Maintain means to establish, collect, use, or disseminate when used in connection with the term record; and, to have control over or responsibility for a system of records, when used in connection with the term system of records.

Notification means communication to an individual whether he is a subject individual.

Office of the Director of National Intelligence means any and all of the components of the ODNI.

Record means any item, collection, or grouping of information about an individual that is maintained by the ODNI including, but not limited to, information such as an individual's education, financial transactions, medical history, and criminal or employment history that contains the individual's name, or an identifying number, symbol, or any other identifier assigned to an individual. When used in this subpart, record means only a record that is in a system of records.

Routine use means the disclosure of a record outside ODNI, without the consent of the subject individual, for a purpose which is compatible with the purpose for which the record was collected. It does not include disclosure which the Privacy Act otherwise permits pursuant to subsection (b) of the Act.

Staff means any current or former regular or special employee, detailee, assignee, employee of a contracting organization, or independent contractor of the ODNI or any of its components.

Subject individual means the person to whom a record pertains (or "record subject").

System of records means a group of records under ODNI's control from which information about an individual is retrieved by the name of the individual or by an identifying number, symbol, or other particular assigned to the individual. Single records or groups of records which are not retrieved by a personal identifier are not part of a system of records,

§ 1701.3 Contact for general information and requests.

Privacy Act requests and appeals and inquiries regarding this subpart or about ODNI's Privacy Act program must be submitted in writing to the Director, Information Management Office (D/IMO), Office of the Director of National Intelligence, Washington, DC 20511 (by mail or by facsimile at 703–482–2144) or to the contact designated in the specific Privacy Act System of Records Notice. Privacy Act requests with the required identification statement and signature pursuant to paragraphs (d) and (e) of § 1701.7 of this subpart must be filed in original form.

§ 1701.4 Privacy Act responsibilities/policy.

The ODNI will administer records about individuals consistent with statutory, administrative, and program responsibilities. Subject to exemptions authorized by the Act, ODNI will collect, maintain and disclose records as required and will honor subjects' rights to view and amend records and to obtain an accounting of disclosures.

§ 1701.5 Collection and maintenance of records.

(a) ODNI will not maintain a record unless:

(1) It is relevant and necessary to accomplish an ODNI function required by statute or Executive Order;

(2) It is acquired to the greatest extent practicable from the subject individual when ODNI may use the record to make any determination about the individual;

(3) The individual providing the record is informed of the authority for providing the record (including whether providing the record is mandatory or voluntary), the principal purpose for maintaining the record, the routine uses for the record, and what effect refusing to provide the record may have;

(4) It is maintained with such accuracy, relevance, timeliness and completeness as is reasonably necessary to ensure fairness to the individual in the determination;

(b) Except as to disclosures made to an agency or made under the FOIA, ODNI will make reasonable efforts prior to disseminating a record about an individual, to ensure that the record is accurate, relevant, timely, and complete;

(c) ODNI will not maintain or develop a system of records that is not the subject of a current or planned public notice;

(d) ODNI will not adopt a routine use of information in a system without notice and invitation to comment published in the FEDERAL REGISTER at least 30 days prior to final adoption of the routine use;

(e) To the extent ODNI participates with a non-Federal agency in matching activities covered by section (8) of the Act, ODNI will publish notice of the matching program in the FEDERAL REGISTER;

(f) ODNI will not maintain a record which describes how an individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the subject individual, or unless pertinent to and within the scope of an authorized law enforcement activity;

(g) When required by the Act, ODNI will maintain an accounting of all disclosures of records by the ODNI to persons, organizations or agencies;

(h) Each ODNI component shall implement administrative, physical and technical controls to prevent unauthorized access to its systems of records, to prevent unauthorized disclosure of records, and to prevent physical damage to or destruction of records;

(i) ODNI will establish rules and instructions for complying with the requirements of the Privacy Act, including notice of the penalties for non-compliance, applicable to all persons involved in the design, development, operation or maintenance of any system of records.

§ 1701.6 Disclosure of records/policy.

Consistent with 5 U.S.C. 552a(b), ODNI will not disclose any record which is contained in a system of records by any means (written, oral or electronic) without the consent of the subject individual unless disclosure without consent is made for reasons permitted under applicable law, including:

(a) Internal agency use on a need-to-know basis;

(b) Release under the Freedom of Information Act (FOIA) if not subject to protection under the FOIA exemptions;

(c) A specific "routine use" as described in the ODNI's published compilation of Routine Uses Applicable to More Than One ODNI System of Records or in specific published Privacy Act Systems of Records Notices (available at *http://www.dni.gov*);

(d) Release to the Bureau of the Census, the National Archives and Records Administration, or the Government Accountability Office, for the performance of those entities' statutory duties;

(e) Release in non-identifiable form to a recipient who has provided written assurance that the record will be used solely for statistical research or reporting;

(f) Compelling circumstances in which the health or safety of an individual is at risk;

(g) Release pursuant to the order of a court of competent jurisdiction or to a governmental entity for a specifically documented civil or criminal law enforcement activity;

(h) Release to either House of Congress or to any committee, subcommittee or joint committee thereof to the extent of matter within its jurisdiction;

(i) Release to a consumer reporting agency in accordance with section 3711(e) of Title 31.

§ 1701.7 Requests for notification of and access to records.

(a) *How to request.* Unless records are not subject to access (see paragraph (b) of this section), individuals seeking access to records about themselves may submit a request in writing to the D/IMO, as directed in Sec. 1701.3 of this subpart, or to the contact designated in the specific Privacy Act System of Records Notice. To ensure proper routing and tracking, requesters should mark the envelope "Privacy Act Request."

(b) *Records not subject to access.* The following records are not subject to review by subject individuals:

(1) Records in ODNI systems of records that ODNI has exempted from access and correction under the Privacy Act, 5 U.S.C. 552a(j) or (k), by notice published in the FEDERAL REGISTER, or where those exemptions require that ODNI can neither confirm nor deny the existence or nonexistence of responsive records (see § 1701.10(c)(iii)).

(2) Records in ODNI systems of records that another agency has exempted from access and correction under the Privacy Act, 5 U.S.C. 552a(j) or (k), by notice published in the FEDERAL REGISTER, or where those exemptions require that ODNI can neither confirm nor deny the existence or nonexistence of responsive records (see § 1701.10(c)(iii)).

(c) *Description of records.* Individuals requesting access to records about themselves should, to the extent possible, describe the nature of the records, why and under what circumstances the requester believes ODNI maintains the records, the time period in which they may have been compiled and, ideally, the name or identifying number of each Privacy Act System of Records in which they might be included. The ODNI publishes notices in the FEDERAL REGISTER that describe its systems of records. The FEDERAL REGISTER compiles these notices biennially and makes them available in hard copy at large reference libraries and in electronic form at the Government Printing Office's World Wide Web site, *http://www.gpoaccess.gov*.

(d) *Verification of identity.* A written request for access to records about oneself must include full (legal) name, current address, date and place of birth, and citizenship status. Aliens lawfully admitted for permanent residence must provide their Alien Registration Number and the date that status was acquired. The D/IMO may request additional or clarifying information to ascertain identity. Access requests must be signed and the signature either notarized or submitted under 28 U.S.C. 1746, authorizing statements made under penalty of perjury as a substitute for notarization.

(e) *Verification of guardianship or representational relationship.* The parent or guardian of a minor, the guardian of an individual under judicial disability, or an attorney retained to represent an individual shall provide, in addition to establishing the identity of the minor or individual represented as required in paragraph (d) of this section, evidence of such representation by submitting a certified copy of the minor's birth certificate, court order, or representational agreement which establishes the relationship and the requester's identity.

(f) ODNI will permit access to or provide copies of records to individuals other than the record subject (or the subject's legal representative) only with the requester's written authorization.

§ 1701.8 Requests to amend or correct records.

(a) *How to request.* Unless the record is not subject to amendment or correction (see paragraph (b) of this section), individuals (or guardians or representatives acting on their behalf) may make a written amendment or correction request to the D/IMO, as directed in § 1701.3 of this subpart, or to the contact designated in a specific Privacy Act System of Records. Requesters seeking amendment or correction should identify the particular record or

portion subject to the request, explain why an amendment or correction is necessary, and provide the desired replacement language. Requesters may submit documentation supporting the request to amend or correct. Requests for amendment or correction will lapse (but may be re-initiated with a new request) if all necessary information is not submitted within forty-five (45) days of the date of the original request. The identity verification procedures of paragraphs (d) and (e) of § 1701.7 of this subpart apply to amendment requests.

(b). (1) Records which are determinations of fact or evidence received (e.g., transcripts of testimony given under oath or written statements made under oath; transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings, which are the official record of those proceedings; pre-sentence records that originated with the courts) and

(2) Records in ODNI systems of records that ODNI or another agency has exempted from amendment and correction under Privacy Act, 5 U.S.C. 552a(j) or (k) by notice published in the FEDERAL REGISTER.

§ 1701.9 Requests for an accounting of record disclosures.

(a) *How to request*. Except where accountings of disclosures are not required to be kept (see paragraph (b) of this section), record subjects (or their guardians or representatives) may request an accounting of disclosures that have been made to another person, organization, or agency as permitted by the Privacy Act at 5 U.S.C. 552a(b). This accounting contains the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. Requests for accounting should identify each record in question and must be made in writing to the D/IMO, as indicated in § 1701.3 of this subpart, or to the contact designated in a specific Privacy Act System of Records.

(b) *Accounting not required*. The ODNI is not required to provide accounting of disclosure in the following circumstances:

(1) Disclosures for which the Privacy Act does not require accounting, i.e., disclosures to employees within the agency and disclosures made under the FOIA;

(2) Disclosures made to law enforcement agencies for authorized law enforcement activities in response to written requests from the respective head of the law enforcement agency specifying the law enforcement activities for which the disclosures are sought; or

(3) Disclosures from systems of records that have been exempted from accounting requirements under the Privacy Act, 5 U.S.C. 552a(j) or (k), by notice published in the FEDERAL REGISTER.

§ 1701.10 ODNI responsibility for responding to access requests.

(a) *Acknowledgement of requests*. Upon receipt of a request providing all necessary information, the D/IMO shall acknowledge receipt to the requester and provide an assigned request number for further reference.

(b) *Tasking to component*. Upon receipt of a proper access request, the D/IMO shall provide a copy of the request to the point of contact (POC) in the ODNI component with which the records sought reside. The POC within the component shall determine whether responsive records exist and, if so, recommend to the D/IMO:

(1) Whether access should be denied in whole or part (and the legal basis for denial under the Privacy Act); or

(2) Whether coordination with or referral to another component or federal agency is appropriate.

(c) *Coordination and referrals*—(1) *Examination of records*. If a component POC receiving a request for access determines that an originating agency or other agency that has a substantial interest in the record is best able to process the request (e.g., the record is governed by another agency's regulation, or another agency originally generated or classified the record), the POC shall forward to the D/IMO all records necessary for coordination with or referral to the other component or agency, as well as specific recommendations with respect to any denials.

(2) *Notice of referral*. Whenever the D/IMO refers all or any part of the responsibility for responding to a request

to another agency, the D/IMO shall notify the requester of the referral.

(3) *Effect of certain exemptions.* (i) In processing a request, the ODNI shall decline to confirm or deny the existence or nonexistence of any responsive records whenever the fact of their existence or nonexistence:

(A) May reveal protected intelligence sources and collection methods (50 U.S.C. 403–1(i)); or

(B) Is classified and subject to an exemption appropriately invoked by ODNI or another agency under subsections (j) or (k) of the Privacy Act.

(ii) In such event, the ODNI will inform the requester in writing and advise the requestor of the right to file an administrative appeal of any adverse determination.

(d) *Time for response.* The D/IMO shall respond to a request for access promptly upon receipt of recommendations from the POC and determinations resulting from any necessary coordination with or referral to another agency. The D/IMO may determine to update a requester on the status of a request that remains outstanding longer than reasonably expected.

(e) *ODNI action on requests for access*—(1) *Grant of access.* Once the D/IMO determines to grant a request for access in whole or in part, the D/IMO shall notify the requester in writing and come to agreement with the requester about how to effect access, whether by onsite review or duplication of the records. If a requester is accompanied by another person, the requester shall be required to authorize in writing any discussion of the records in the presence of the other person.

(2) *Denial of access.* The D/IMO shall notify the requester in writing when an adverse determination is made denying a request for access in any respect. Adverse determinations, or denials, consist of a determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that what has been requested is not a record subject to the Privacy Act; or a determination that the existence of a record can neither be confirmed nor denied. The notification letter shall state:

(i) The reason(s) for the denial; and

(ii) The procedure for appeal of the denial under § 1701.14 of this subpart.

§ 1701.11 ODNI responsibility for responding to requests for amendment or correction.

(a) *Acknowledgement of request.* The D/IMO shall acknowledge receipt of a request for amendment or correction of records in writing and provide an assigned request number for further reference.

(b) *Tasking of component.* Upon receipt of a proper request to amend or correct a record, the D/IMO shall forward the request to the POC in the component maintaining the record. The POC shall promptly evaluate the proposed amendment or correction in light of any supporting justification and recommend that the D/IMO grant or deny the request or, if the request involves a record subject to correction by an originating agency, refer the request to the other agency.

(c) *Action on request for amendment or correction.* (1) If the POC determines that the request for amendment or correction is justified, in whole or in part, the D/IMO shall promptly:

(i) Make the amendment, in whole or in part, as requested and provide the requester a written description of the amendment or correction made; and

(ii) Provide written notice of the amendment or correction to all persons, organizations or agencies to which the record has been disclosed (if an accounting of the disclosure was made);

(2) Where the D/IMO has referred an amendment request to another agency, the D/IMO, upon confirmation from that agency that the amendment has been effected, shall provide written notice of the amendment or correction to all persons, organizations or agencies to which ODNI previously disclosed the record.

(3) If the POC determines that the requester's records are accurate, relevant, timely and complete, and that no basis exists for amending or correcting the record, either in whole or in part, the D/IMO shall inform the requester in writing of:

(i) The reason(s) for the denial; and

(ii) The procedure for appeal of the denial under Sec. 1701.15 of this subpart.

§ 1701.12 ODNI responsibility for responding to requests for accounting.

(a) *Acknowledgement of request.* Upon receipt of a request for accounting, the D/IMO shall acknowledge receipt of the request in writing and provide an assigned request number for further reference.

(b) *Tasking of component.* Upon receipt of a request for accounting, the D/IMO shall forward the request to the POC in the component maintaining the record. The POC shall work with the component's information management officer and the systems administrator to generate the requested disclosure history.

(c) *Action on request for accounting.* The D/IMO will notify the requester when the accounting is available for on-site review or transmission in paper or electronic medium.

(d) *Notice of court-ordered disclosures.* The D/IMO shall make reasonable efforts to notify an individual whose record is disclosed pursuant to court order. Notice shall be made within a reasonable time after receipt of the order; however, when the order is not a matter of public record, the notice shall be made only after the order becomes public. Notice shall be sent to the individual's last known address and include a copy of the order and a description of the information disclosed. No notice shall be made regarding records disclosed from a criminal law enforcement system that has been exempted from the notice requirement.

(e) *Notice of emergency disclosures.* ODNI shall notify an individual whose record it discloses under compelling circumstances affecting health or safety. This notice shall be mailed to the individual's last known address and shall state the nature of the information disclosed; the person, organization, or agency to which it was disclosed; the date of disclosure; and the compelling circumstances justifying the disclosure. This provision shall not apply in circumstances involving classified records that have been exempted from disclosure pursuant to subsection (j) or (k) of the Privacy Act.

§ 1701.13 Special procedures for medical/psychiatric/psychological records.

Current and former ODNI employees, including current and former employees of ODNI contractors, and unsuccessful applicants for employment may seek access to their medical, psychiatric or psychological testing records by writing to: Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505, and provide identifying information as required by paragraphs (d) and (e) of § 1701.7 of this subpart. The Central Intelligence Agency's Privacy Act Regulations will govern administration of these types of records, including appeals from adverse determinations.

§ 1701.14 Appeals.

(a) Individuals may appeal denials of requests for access, amendment, or accounting by submitting a written request for review to the Director, Information Management Office (D/IMO) at the Office of the Director of National Intelligence, Washington, DC 20511. The words "PRIVACY ACT APPEAL" should be written on the letter and the envelope. The appeal must be signed by the record subject or legal representative. No personal appearance or hearing on appeal will be allowed.

(b) The D/IMO must receive the appeal letter within 45 calendar days of the date the requester received the notice of denial. The postmark is conclusive as to timeliness. Copies of correspondence from ODNI denying the request to access or amend the record should be included with the appeal, if possible. At a minimum, the appeal letter should identify:

(1) The records involved;

(2) The date of the initial request for access to or amendment of the record;

(3) The date of ODNI's denial of that request; and

(4) A statement of the reasons supporting the request for reversal of the initial decision. The statement should focus on information not previously available or legal arguments demonstrating that the ODNI's decision is improper.

(c) Following receipt of the appeal, the Director of Intelligence Staff (DIS) shall, in consultation with the Office of General Counsel, make a final determination in writing on the appeal.

(d) Where ODNI reverses an initial denial, the following procedures apply:

(1) If ODNI reverses an initial denial of access, the procedures in paragraph (e)(1) of § 1701.10 of this subpart will apply.

(2) If ODNI reverses its initial denial of a request to amend a record, the POC will ensure that the record is corrected as requested, and the D/IMO will inform the individual of the correction, as well as all persons, organizations and agencies to which ODNI had disclosed the record.

(3) If ODNI reverses its initial denial of a request for accounting, the POC will notify the requester when the accounting is available for on-site review or transmission in paper or electronic medium.

(e) If ODNI upholds its initial denial or reverses in part (*i.e.*, only partially granting the request), ODNI's notice of final agency action will inform the requester of the following rights:

(1) Judicial review of the denial under 5 U.S.C. 552a(g)(1), as limited by 5 U.S.C. 552a(g)(5).

(2) Opportunity to file a statement of disagreement with the denial, citing the reasons for disagreeing with ODNI's final determination not to correct or amend a record. The requester's statement of disagreement should explain why he disputes the accuracy of the record.

(3) Inclusion in one's record of copies of the statement of disagreement and the final denial, which ODNI will provide to all subsequent recipients of the disputed record, as well as to all previous recipients of the record where an accounting was made of prior disclosures of the record.

§ 1701.15 Fees.

ODNI shall charge fees for duplication of records under the Privacy Act, 5 U.S.C. 552a, in the same way in which it will charge for duplication of records under § 1700.7(g), ODNI's regulation implementing the fee provision of the Freedom of Information Act, 5 U.S.C. 552.

§ 1701.16 Contractors.

(a) Any approved contract for the operation of a Privacy Act system of records to accomplish a function of the ODNI will contain the Privacy Act provisions prescribed by the Federal Acquisition Regulations (FAR) at 48 CFR part 24, requiring the contractor to comply with the Privacy Act and this subpart. The contracting component will be responsible for ensuring that the contractor complies with these contract requirements. This section does not apply to systems of records maintained by a contractor as a function of management discretion, e.g., the contractor's personnel records.

(b) Where the contract contains a provision requiring the contractor to comply with the Privacy Act and this subpart, the contractor and any employee of the contractor will be considered employees of the ODNI for purposes of the criminal penalties of the Act, 5 U.S.C. 552a(i).

§ 1701.17 Standards of conduct.

(a) *General*. ODNI will ensure that staff are aware of the provisions of the Privacy Act and of their responsibilities for protecting personal information that ODNI collects and maintains, consistent with Sec. 1701.5 and 1701.6 of this subpart.

(b) *Criminal penalties*—(1) *Unauthorized disclosure*. Criminal penalties may be imposed against any ODNI staff who, by virtue of employment, has possession or access to ODNI records which contain information identifiable with an individual, the disclosure of which is prohibited by the Privacy Act or by these rules, and who, knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it.

(2) *Unauthorized maintenance*. Criminal penalties may be imposed against any ODNI staff who willfully maintains a system of records without meeting the requirements of subsection (e)(4) of the Privacy Act, 5 U.S.C. 552a. The D/IMO, the Civil Liberties Protection Officer, the General Counsel, and the Inspector General are authorized independently to conduct such surveys and inspect such records as necessary from

time to time to ensure that these requirements are met.

(3) *Unauthorized requests.* Criminal penalties may be imposed upon any person who knowingly and willfully requests or obtains any record concerning an individual from the ODNI under false pretenses.

Subpart B—Exemption of Record Systems Under the Privacy Act

§ 1701.20 Exemption policies.

(a) *General.* The DNI has determined that invoking exemptions under the Privacy Act and continuing exemptions previously asserted by agencies whose records ODNI receives is necessary: to ensure against the release of classified information essential to the national defense or foreign relations; to protect intelligence sources and methods; and to maintain the integrity and effectiveness of intelligence, investigative and law enforcement processes. Accordingly, as authorized by the Privacy Act, 5 U.S.C. 552a, subsections (j) and (k), and in accordance with the rulemaking procedures of the Administrative Procedures Act, 5 U.S.C. 553, the ODNI shall:

(1) Exercise its authority pursuant to subsections (j) and (k) of the Privacy Act to exempt certain ODNI systems of records or portions of systems of records from various provisions of the Privacy Act; and

(2) Continue in effect and assert all exemptions claimed under Privacy Act subsections (j) and (k) by an originating agency from which the ODNI obtains records where the purposes underlying the original exemption remain valid and necessary to protect the contents of the record.

(b) *Related policies.* (1) The exemptions asserted apply to records only to the extent they meet the criteria of subsections (j) and (k) of the Privacy Act, whether claimed by the ODNI or the originator of the records.

(2) Discretion to supersede exemption: Where complying with a request for access or amendment would not appear to interfere with or adversely affect a counterterrorism or law enforcement interest, and unless prohibited by law, the D/IMO may exercise his discretion to waive the exemption. Discretionary waiver of an exemption with respect to a record will not obligate the ODNI to waive the exemption with respect to any other record in an exempted system of records. As a condition of such discretionary access, ODNI may impose any restrictions (*e.g.*, concerning the location of file reviews) deemed necessary or advisable to protect the security of agency operations, information, personnel, or facilities.

(3) Records in ODNI systems also are subject to protection under 50 U.S.C. 403–1(i), the provision of the National Security Act of 1947 which requires the DNI to protect intelligence sources and methods from unauthorized disclosure.

§ 1701.21 Exemption of National Counterterrorism Center (NCTC) systems of records.

(a) The ODNI exempts the following systems of records from the requirements of subsections (c)(3); (d)(1), (2), (3) and (4); (e)(1); (e)(4)(G), (H), (I); and (f) of the Privacy Act to the extent that information in the system is subject to exemption pursuant subsections (k)(1) and (k)(5) of the Act:

(1) NCTC Human Resources Management System (ODNI/NCTC–001).

(2) [Reserved]

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an investigative interest on the part of the ODNI or recipient agency and could result in release of properly classified national security or foreign policy information.

(2) From subsections (d)(1), (2), (3) and (4) (record subject's right to access and amend records) because affording access and amendment rights could alert the record subject to the investigative interest of intelligence or law enforcement agencies or compromise sensitive information classified in the interest of national security. In the absence of a national security basis for exemption, records in this system may be exempted from access and amendment to the extent necessary to honor promises of confidentiality to persons providing information concerning a

candidate for position. Inability to maintain such confidentiality would restrict the free flow of information vital to a determination of a candidate's qualifications and suitability.

(3) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible to establish relevance and necessity before all information is considered and evaluated in relation to an intelligence concern. In the absence of a national security basis for exemption under subsection (k)(1), records in this system may be exempted from the relevance requirement pursuant to subsection (k)(5) because it is not possible to determine in advance what exact information may assist in determining the qualifications and suitability of a candidate for position. Seemingly irrelevant details, when combined with other data, can provide a useful composite for determining whether a candidate should be appointed.

(4) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subjects of the existence of records about them and how they may access records and contest contents) because the system is exempted from subsection (d) provisions regarding access and amendment, and from the subsection (f) requirement to promulgate agency rules. Nevertheless, the ODNI has published notice concerning notification, access, and contest procedures because it may in certain circumstances determine it appropriate to provide subjects access to all or a portion of the records about them in a system of records.

(5) From subsection (e)(4)(I) (identifying sources of records in the system of records) because identifying sources could result in disclosure of properly classified national defense or foreign policy information, intelligence sources and methods, and investigatory techniques and procedures. Notwithstanding its proposed exemption from this requirement, ODNI identifies record sources in broad categories sufficient to provide general notice of the origins of the information it maintains in its systems of records.

(6) From subsection (f) (agency rules for notifying subjects to the existence of records about them, for accessing and amending records, and for assessing fees) because the system is exempt from subsection (d) provisions regarding access and amendment of records by record subjects. Nevertheless, the ODNI has published agency rules concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the ODNI may determine it appropriate to satisfy a record subject's access request.

(c) The ODNI exempts the following systems of records from the requirements of subsections (c)(3); (d)(1), (2), (3) and (4); (e)(1); (e)(4)(G), (H), (I); and (f) of the Privacy Act to the extent that information in the system is subject to exemption pursuant to subsection (k)(1) of the Act:

(1) NCTC Access Authorization Records (ODNI/NCTC–002).

(2) NCTC Telephone Directory (ODNI/NCTC–003).

(3) NCTC Partnership Management Records (ODNI/NCTC–006).

(4) NCTC Tacit Knowledge Management Records (ODNI/NCTC–007).

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an investigative interest on the part of the ODNI or recipient agency and could result in release of properly classified national security or foreign policy information.

(2) From subsections (d)(1), (2), (3) and (4) (record subject's right to access and amend records) because affording access and amendment rights could alert the record subject to the investigative interest of intelligence or law enforcement agencies or compromise sensitive information classified in the interest of national security.

(3) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible to establish relevance and necessity before all information is considered and evaluated in relation to an intelligence concern.

(4) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subjects of the existence of records about them and how they may access records and contest contents) because the system is exempted from subsection (d) provisions regarding access and amendment and from the subsection (f) requirement to promulgate agency rules. Nevertheless, the ODNI has published notice concerning notification, access, and contest procedures because it may in certain circumstances determine it appropriate to provide subjects access to all or a portion of the records about them in a system of records.

(5) From subsection (e)(4)(I) (identifying sources of records in the system of records) because identifying sources could result in disclosure of properly classified national defense or foreign policy information, intelligence sources and methods, and investigatory techniques and procedures. Notwithstanding its proposed exemption from this requirement, ODNI identifies record sources in broad categories sufficient to provide general notice of the origins of the information it maintains in its systems of records.

(6) From subsection (f) (agency rules for notifying subjects to the existence of records about them, for accessing and amending records, and for assessing fees) because the system is exempt from subsection (d) provisions regarding access and amendment of records by record subjects. Nevertheless, the ODNI has published agency rules concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the ODNI may determine it appropriate to satisfy a record subject's access request.

(e) The ODNI exempts the following systems of records from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1); (e)(4)(G), (H), (I); and (f) of the Privacy Act, to the extent that information in the system is subject to exemption pursuant to subsections (k)(1) and (k)(2) of the Act:

(1) NCTC Knowledge Repository (SANCTUM) (ODNI/NCTC–004).

(2) NCTC Online (ODNI/NCTC–005).

(3) NCTC Terrorism Analysis Records (ODNI/NCTC–008).

(4) NCTC Terrorist Identities Records (ODNI/NCTC–009).

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an investigative interest on the part of the ODNI as well as the recipient agency and could: Result in release of properly classified national security or foreign policy information; compromise ongoing efforts to investigate a known or suspected terrorist; reveal sensitive investigative or surveillance techniques; or identify a confidential source. With this information, the record subject could frustrate counterintelligence measures; impede an investigation by destroying evidence or intimidating potential witnesses; endanger the physical safety of sources, witnesses, and law enforcement and intelligence personnel and their families; or evade apprehension or prosecution by law enforcement personnel.

(2) From subsections (d)(1), (2), (3) and (4) (record subject's right to access and amend records) because these provisions concern individual access to and amendment of counterterrorism, investigatory and intelligence records. Affording access and amendment rights could alert the record subject to the fact and nature of an investigation or the investigative interest of intelligence or law enforcement agencies; permit the subject to frustrate such investigation, surveillance or potential prosecution; compromise sensitive information classified in the interest of national security; identify a confidential source or disclose information which would reveal a sensitive investigative or intelligence technique; and endanger the health or safety of law enforcement personnel, confidential informants, and witnesses. In addition, affording subjects access and amendment rights would impose an impossible administrative burden to continuously reexamine investigations, analyses, and reports.

(3) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible for intelligence or law enforcement agencies to know in advance what information about an encounter with a known or suspected terrorist will be relevant for the purpose of conducting an operational response. Relevance and necessity are questions of judgment and timing, and only after information is evaluated can relevance and necessity be established. In addition, information in the system of records may relate to matters under the investigative jurisdiction of another agency, and may not readily be segregated. Furthermore, information in these systems of records, over time, aid in establishing patterns of criminal activity that can provide leads for other law enforcement agencies.

(4) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subjects of the existence of records about them and how they may access records and contest contents) because the system is exempted from subsection (d) provisions regarding access and amendment and from the subsection (f) requirement to promulgate agency rules. Nevertheless, the ODNI has published notice concerning notification, access, and contest procedures because it may in certain circumstances determine it appropriate to provide subjects access to all or a portion of the records about them in a system of records.

(5) From subsection (e)(4)(I) (identifying sources of records in the system of records) because identifying sources could result in disclosure of properly classified national defense or foreign policy information. Additionally, exemption from this provision is necessary to protect the privacy and safety of witnesses and sources of information, including intelligence sources and methods and investigatory techniques and procedures. Notwithstanding its proposed exemption from this requirement, ODNI identifies record sources in broad categories sufficient to provide general notice of the origins of the information it maintains in its systems of records.

(6) From subsection (f) (agency rules for notifying subjects to the existence of records about them, for accessing and amending records and for assessing fees) because the system is exempt from subsection (d) provisions regarding access and amendment of records by record subjects. Nevertheless, the ODNI has published agency rules concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the ODNI may determine it appropriate to satisfy a record subject's access request.

§ 1701.22 Exemption of Office of the National Counterintelligence Executive (ONCIX) system of records.

(a) The ODNI exempts the following system of records from the requirements of subsections (c)(3); (d)(1), (2), (3), (4); (e)(1); (e)(4)(G), (H), (I); and (f) of the Privacy Act, to the extent that information in the system is subject to exemption pursuant to subsections (k)(1) and (k)(2) of the Act:

(1) ONCIX Counterintelligence Damage Assessment Records (ODNI/ONCIX–001).

(2) [Reserved]

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an investigative interest on the part of the ODNI as well as the recipient agency and could: result in release of properly classified national security or foreign policy information; compromise ongoing efforts to investigate a known or suspected terrorist; reveal sensitive investigative or surveillance techniques; or identify a confidential source. With this information, the record subject could frustrate counterintelligence measures; impede an investigation by destroying evidence or intimidating potential witnesses; endanger the physical safety of sources, witnesses, and law enforcement and intelligence personnel and their families; or evade apprehension or prosecution by law enforcement personnel.

(2) From subsections (d)(1), (2), (3) and (4) (record subject's right to access and amend records) because these provisions concern individual access to and amendment of counterterrorism, investigatory and intelligence records. Affording access and amendment rights could alert the record subject to the fact and nature of an investigation or the investigative interest of intelligence or law enforcement agencies; permit the subject to frustrate such investigation, surveillance or potential prosecution; compromise sensitive information classified in the interest of national security; identify a confidential source or disclose information which would reveal a sensitive investigative or intelligence technique; and endanger the health or safety of law enforcement personnel, confidential informants, and witnesses. In addition, affording subjects access and amendment rights would impose an impossible administrative burden to continuously reexamine investigations, analyses, and reports.

(3) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible to know in advance what information will be relevant to evaluate and mitigate damage to the national security. Relevance and necessity are questions of judgment and timing, and only after information is evaluated can relevance and necessity be established. In addition, information in the system of records may relate to matters under the investigative jurisdiction of another agency, and may not readily be segregated. Furthermore, information in these systems of records, over time, aid in establishing patterns of criminal activity that can provide leads for other law enforcement agencies.

(4) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subjects to the existence of records about them and how they may access records and contest contents) because the system is exempted from subsection (d) provisions regarding access and amendment and from the subsection (f) requirement to promulgate agency rules. Nevertheless, the ODNI has published notice concerning notification, access, and contest procedures because it may in certain circumstances determine it appropriate to provide subjects access to all or a portion of the records about them in a system of records.

(5) From subsection (e)(4)(I) (identifying sources of records in the system of records) because identifying sources could result in disclosure of properly classified national defense or foreign policy information. Additionally, exemption from this provision is necessary to protect the privacy and safety of witnesses and sources of information, including intelligence sources and methods and investigatory techniques and procedures. Notwithstanding its proposed exemption from this requirement, ODNI identifies record sources in broad categories sufficient to provide general notice of the origins of the information it maintains in its systems of records.

(6) From subsection (f) (agency rules for notifying subjects to the existence of records about them, for accessing and amending records and for assessing fees) because the system is exempt from subsection (d) provisions regarding access and amendment of records by record subjects. Nevertheless, the ODNI has published agency rules concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the ODNI may determine it appropriate to satisfy a record subject's access request.

§ 1701.23 Exemption of Office of Inspector General (OIG) systems of records.

(a) The ODNI exempts the following systems of records from the requirements of subsections (c)(3); (d)(1), (2), (3) and (4); (e)(1); (e)(4)(G), (H), (I); and (f) of the Privacy Act to the extent that information in the system is subject to exemption pursuant subsections (k)(1) and (k)(5) of the Act:

(1) OIG Human Resources Records (ODNI/OIG–001).

(2) OIG Experts Contact Records (ODNI/OIG–002).

(b) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an investigative interest on the part of the ODNI or recipient agency and could result in release of properly classified national security or foreign policy information.

(2) From subsections (d)(1), (2), (3) and (4) (record subject's right to access and amend records) because affording access and amendment rights could alert the record subject to the investigative interest of intelligence or law enforcement agencies or compromise sensitive information classified in the interest of national security. In the absence of a national security basis for exemption under subsection (k)(1), records in this system may be exempted from access and amendment pursuant to subsection (k)(5) to the extent necessary to honor promises of confidentiality to persons providing information concerning a candidate for position. Inability to maintain such confidentiality would restrict the free flow of information vital to a determination of a candidate's qualifications and suitability.

(3) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible to establish relevance and necessity before all information is considered and evaluated in relation to an intelligence concern. In the absence of a national security basis for exemption under subsection (k)(1), records in this system may be exempted from the relevance requirement pursuant to subsection (k)(5) because it is not always possible to determine in advance what exact information may assist in determining the qualifications and suitability of a candidate for position. Seemingly irrelevant details, when combined with other data, can provide a useful composite for determining whether a candidate should be appointed.

(4) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subjects of the existence of records about them and how they may access records and contest contents) because the system is exempted from subsection (d) provisions regarding access and amendment and from the subsection (f) requirement to promulgate agency rules. Nevertheless, the ODNI has published such a notice concerning notification, access, and contest procedures because it may in certain circumstances determine it appropriate to provide subjects access to all or a portion of the records about them in a system of records.

(5) From subsection (e)(4)(I) (identifying sources of records in the system of records) because identifying sources could result in disclosure of properly classified national defense or foreign policy information, intelligence sources and methods and investigatory techniques and procedures. Notwithstanding its proposed exemption from this requirement, ODNI identifies record sources in broad categories sufficient to provide general notice of the origins of the information it maintains in its systems of records.

(6) From subsection (f) (agency rules for notifying subjects to the existence of records about them, for accessing and amending records and for assessing fees) because the system is exempt from subsection (d) provisions regarding access and amendment of records by record subjects. Nevertheless, the ODNI has published agency rules concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the ODNI may determine it appropriate to satisfy a record subject's access request.

(c) The ODNI exempts the following system of records from the requirements of subsections (c)(3) and (4); (d)(1), (2), (3), (4); (e)(1), (2), (3), (5), (8) and (12); and (g) of the Privacy Act, to the extent that information in the system is subject to exemption pursuant to subsection (j)(2) of the Act. In addition, the following system of records is exempted from the requirements of subsections (c)(3); (d)(1), (2), (3) and (4); (e)(1); (e)(4)(G), (H) and (I); and (f) of the Privacy Act, to the extent that information in the system is subject to exemption pursuant to subsections (k)(1) and (k)(2) of the Act.

(1) OIG Investigation and Interview Records (ODNI/OIG–003).

(2) [Reserved]

(d) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an investigative interest on the part of the ODNI as well as the recipient agency and could: result in release of properly classified national security or foreign policy information; compromise ongoing efforts to investigate a known or suspected terrorist; reveal sensitive investigative or surveillance techniques; or identify a confidential source. With this information, the record subject could frustrate counterintelligence measures; impede an investigation by destroying evidence or intimidating potential witnesses; endanger the physical safety of sources, witnesses, and law enforcement and intelligence personnel and their families; or evade apprehension or prosecution by law enforcement personnel.

(2) From subsection (c)(4) (notice of amendment to record recipients) because the system is exempted from the access and amendment provisions of subsection (d).

(3) From subsections (d)(1), (2), (3) and (4) (record subject's right to access and amend records) because these provisions concern individual access to and amendment of counterterrorism, investigatory and intelligence records. Affording access and amendment rights could alert the record subject to the fact and nature of an investigation or the investigative interest of intelligence or law enforcement agencies; permit the subject to frustrate such investigation, surveillance or potential prosecution; compromise sensitive information classified in the interest of national security; identify a confidential source or disclose information which would reveal a sensitive investigative or intelligence technique; and endanger the health or safety of law enforcement personnel, confidential informants, and witnesses. In addition, affording subjects access and amendment rights would impose an impossible administrative burden to continuously reexamine investigations, analyses, and reports.

(4) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible to know in advance what information will be relevant for the purpose of conducting an investigation. Relevance and necessity are questions of judgment and timing, and only after information is evaluated can relevance and necessity be established. In addition, information in the system of records may relate to matters under the investigative jurisdiction of another agency, and may not readily be segregated. Furthermore, information in these systems of records, over time, aid in establishing patterns of criminal activity that can provide leads for other law enforcement agencies.

(5) From subsection (e)(2) (collection directly from the individual) because application of this provision would alert the subject of a counterterrorism investigation, study or analysis to that fact, permitting the subject to frustrate or impede the activity. Counterterrorism investigations necessarily rely on information obtained from third parties rather than information furnished by subjects themselves.

(6) From subsection (e)(3) (provide Privacy Act Statement to subjects furnishing information) because the system is exempted from the (e)(2) requirement to collect information directly from the subject.

(7) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subjects of the existence of records about them and how they may access records and contest contents) because the system is exempted from subsection (d) provisions regarding access and amendment and from the subsection (f) requirement to promulgate agency rules. Nevertheless, the ODNI has published notice concerning notification, access, and contest procedures because it may in certain circumstances determine it appropriate to provide subjects access to all or a portion of the records about them in a system of records.

(8) From subsection (e)(4)(I) (identifying sources of records in the system of records) because identifying sources could result in disclosure of properly

classified national defense or foreign policy information. Additionally, exemption from this provision is necessary to protect the privacy and safety of witnesses and sources of information, including intelligence sources and methods and investigatory techniques and procedures. Notwithstanding its proposed exemption from this requirement, ODNI identifies record sources in broad categories sufficient to provide general notice of the origins of the information it maintains in its systems of records.

(9) From subsection (e)(5) (maintain timely, accurate, complete and up-to-date records) because many of the records in the system are derived from other domestic and foreign agency record systems over which ODNI exercises no control. In addition, in collecting information for counterterrorism, intelligence, and law enforcement purposes, it is not possible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time and the development of additional facts and circumstances, seemingly irrelevant or dated information may acquire significance. The restrictions imposed by (e)(5) would limit the ability of intelligence analysts to exercise judgment in conducting investigations and impede development of intelligence necessary for effective counterterrorism and law enforcement efforts.

(10) From subsection (e)(8) (notice of compelled disclosures) because requiring individual notice of legally compelled disclosure poses an impossible administrative burden and could alert subjects of counterterrorism, law enforcement, or intelligence investigations to the previously unknown fact of those investigations.

(11) From subsection (e)(12) (public notice of matching activity) because, to the extent such activities are not otherwise excluded from the matching requirements of the Privacy Act, publishing advance notice in the FEDERAL REGISTER would frustrate the ability of intelligence analysts to act quickly in furtherance of analytical efforts.

(12) From subsection (f) (agency rules for notifying subjects to the existence of records about them, for accessing and amending records and for assessing fees) because the system is exempt from the subsection (d) provisions regarding access and amendment of records by record subjects. Nevertheless, the ODNI has published agency rules concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the ODNI may determine it appropriate to satisfy a record subject's access request.

(13) From subsection (g) (civil remedies) to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

§ 1701.24 Exemption of Office of the Director of National Intelligence (ODNI) systems of records.

(a) The ODNI exempts the following systems of records from the requirements of subsections (c)(3); (d)(1),(2),(3) and (4); (e)(1); (e)(4)(G),(H),(I); and (f) of the Privacy Act to the extent that information in the system is subject to exemption pursuant subsections (k)(1), (k)(2) or (k)(5) of the Act as noted in the individual systems notices:

(1) Manuscript, Presentation and Resume Review Records (ODNI–01).

(2) Executive Secretary Action Management System Records (ODNI–02).

(3) Public Affairs Office Records (ODNI–03).

(4) Office of Legislative Affairs Records (ODNI–04).

(5) ODNI Guest Speaker Records (ODNI–05).

(6) Office of General Counsel Records (ODNI–06).

(7) Analytic Resources Catalog (ODNI–07).

(8) Intelligence Community Customer Registry (ODNI–09).

(9) EEO and Diversity Office Records (ODNI–10).

(10) Office of Protocol Records (ODNI–11).

(11) IC Security Clearance and Access Approval Repository (ODNI–12).

(12) Security Clearance Reform Research Records (ODNI–13).

(13) Civil Liberties and Privacy Office Complaint Records (ODNI–14).

(14) National Intelligence Council Records (ODNI–15).

(b) Exemption of records in theses systems from any or all of the enumerated requirements may be necessary for the following reasons:

(1) From subsection (c)(3) (accounting of disclosures) because an accounting of disclosures from records concerning the record subject would specifically reveal an intelligence or investigative interest on the part of the ODNI or recipient agency and could result in release of properly classified national security or foreign policy information.

(2) From subsections (d)(1), (2), (3) and (4) (record subject's right to access and amend records) because affording access and amendment rights could alert the record subject to the investigative interest of intelligence or law enforcement agencies or compromise sensitive information classified in the interest of national security. In the absence of a national security basis for exemption, records in this system may be exempted from access and amendment to the extent necessary to honor promises of confidentiality to persons providing information concerning a candidate for position. Inability to maintain such confidentiality would restrict the free flow of information vital to a determination of a candidate's qualifications and suitability.

(3) From subsection (e)(1) (maintain only relevant and necessary records) because it is not always possible to establish relevance and necessity before all information is considered and evaluated in relation to an intelligence concern. In the absence of a national security basis for exemption under subsection (k)(1), records in this system may be exempted from the relevance requirement pursuant to subsection (k)(5) because it is not possible to determine in advance what exact information may assist in determining the qualifications and suitability of a candidate for position. Seemingly irrelevant details, when combined with other data, can provide a useful composite for determining whether a candidate should be appointed.

(4) From subsections (e)(4)(G) and (H) (publication of procedures for notifying subjects of the existence of records about them and how they may access records and contest contents) because the system is exempted from subsection (d) provisions regarding access and amendment, and from the subsection (f) requirement to promulgate agency rules. Nevertheless, the ODNI has published notice concerning notification, access, and contest procedures because it may in certain circumstances determine it appropriate to provide subjects access to all or a portion of the records about them in a system of records.

(5) From subsection (e)(4)(I) (identifying sources of records in the system of records) because identifying sources could result in disclosure of properly classified national defense or foreign policy information, intelligence sources and methods, and investigatory techniques and procedures. Notwithstanding its proposed exemption from this requirement, ODNI identifies record sources in broad categories sufficient to provide general notice of the origins of the information it maintains in its systems of records.

(6) From subsection (f) (agency rules for notifying subjects to the existence of records about them, for accessing and amending records, and for assessing fees) because the system is exempt from subsection (d) provisions regarding access and amendment of records by record subjects. Nevertheless, the ODNI has published agency rules concerning notification of a subject in response to his request if any system of records named by the subject contains a record pertaining to him and procedures by which the subject may access or amend the records. Notwithstanding exemption, the ODNI may determine it appropriate to satisfy a record subject's access request.

[75 FR 57166, Sept. 20, 2010]

Subpart C—Routine Uses Applicable to More Than One ODNI System of Records

§ 1701.30 Policy and applicability.

(a) ODNI proposes the following general routine uses to foster simplicity and economy and to avoid redundancy or error by duplication in multiple

ODNI systems of records and in systems of records established hereafter by ODNI or by one of its components.

(b) These general routine uses may apply to every Privacy Act system of records maintained by ODNI and its components, unless specifically stated otherwise in the System of Records Notice for a particular system. Additional general routine uses may be identified as notices of systems of records are published.

(c) Routine uses specific to a particular System of Records are identified in the System of Records Notice for that system.

§ 1701.31 General routine uses.

(a) Except as noted on Standard Forms 85 and 86 and supplemental forms thereto (questionnaires for employment in, respectively, "non-sensitive" and "national security" positions within the Federal government), a record that on its face or in conjunction with other information indicates or relates to a violation or potential violation of law, whether civil, criminal, administrative or regulatory in nature, and whether arising by general statute, particular program statute, regulation, rule or order issued pursuant thereto, may be disclosed as a routine use to an appropriate federal, state, territorial, tribal, local law enforcement authority, foreign government or international law enforcement authority, or to an appropriate regulatory body charged with investigating, enforcing, or prosecuting such violations.

(b) A record from a system of records maintained by the ODNI may be disclosed as a routine use, subject to appropriate protections for further disclosure, in the course of presenting information or evidence to a magistrate, special master, administrative law judge, or to the presiding official of an administrative board, panel or other administrative body.

(c) A record from a system of records maintained by the ODNI may be disclosed as a routine use to representatives of the Department of Justice or any other entity responsible for representing the interests of the ODNI in connection with potential or actual civil, criminal, administrative, judicial or legislative proceedings or hearings, for the purpose of representing or providing advice to: The ODNI; any staff of the ODNI in his or her official capacity; any staff of the ODNI in his or her individual capacity where the staff has submitted a request for representation by the United States or for reimbursement of expenses associated with retaining counsel; or the United States or another Federal agency, when the United States or the agency is a party to such proceeding and the record is relevant and necessary to such proceeding.

(d) A record from a system of records maintained by the ODNI may be disclosed as a routine use in a proceeding before a court or adjudicative body when any of the following is a party to litigation or has an interest in such litigation, and the ODNI, Office of General Counsel, determines that use of such records is relevant and necessary to the litigation: The ODNI; any staff of the ODNI in his or her official capacity; any staff of the ODNI in his or her individual capacity where the Department of Justice has agreed to represent the staff or has agreed to provide counsel at government expense; or the United States or another Federal agency, where the ODNI, Office of General Counsel, determines that litigation is likely to affect the ODNI.

(e) A record from a system of records maintained by the ODNI may be disclosed as a routine use to representatives of the Department of Justice and other U.S. Government entities, to the extent necessary to obtain advice on any matter within the official responsibilities of such representatives and the responsibilities of the ODNI.

(f) A record from a system of records maintained by the ODNI may be disclosed as a routine use to a Federal, state or local agency or other appropriate entities or individuals from which/whom information may be sought relevant to: A decision concerning the hiring or retention of an employee or other personnel action; the issuing or retention of a security clearance or special access, contract, grant, license, or other benefit; or the conduct of an authorized investigation or inquiry, to the extent necessary to identify the individual, inform the

source of the nature and purpose of the inquiry, and identify the type of information requested.

(g) A record from a system of records maintained by the ODNI may be disclosed as a routine use to any Federal, state, local, tribal or other public authority, or to a legitimate agency of a foreign government or international authority to the extent the record is relevant and necessary to the other entity's decision regarding the hiring or retention of an employee or other personnel action; the issuing or retention of a security clearance or special access, contract, grant, license, or other benefit; or the conduct of an authorized inquiry or investigation.

(h) A record from a system of records maintained by the ODNI may be disclosed as a routine use to a Member of Congress or Congressional staffer in response to an inquiry from that Member of Congress or Congressional staffer made at the written request of the individual who is the subject of the record.

(i) A record from a system of records maintained by the ODNI may be disclosed to the Office of Management and Budget in connection with the review of private relief legislation, as set forth in Office of Management and Budget Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in the Circular.

(j) A record from a system of records maintained by the ODNI may be disclosed as a routine use to any agency, organization, or individual for authorized audit operations, and for meeting related reporting requirements, including disclosure to the National Archives and Records Administration for records management inspections and such other purposes conducted under the authority of 44 U.S.C. 2904 and 2906, or successor provisions.

(k) A record from a system of records maintained by the ODNI may be disclosed as a routine use to individual members or staff of Congressional intelligence oversight committees in connection with the exercise of the committees' oversight and legislative functions.

(l) A record from a system of records maintained by the ODNI may be disclosed as a routine use pursuant to Executive Order to the President's Foreign Intelligence Advisory Board, the President's Intelligence Oversight Board, to any successor organizations, and to any intelligence oversight entity established by the President, when the Office of the General Counsel or the Office of the Inspector General determines that disclosure will assist such entities in performing their oversight functions and that such disclosure is otherwise lawful.

(m) A record from a system of records maintained by the ODNI may be disclosed as a routine use to contractors, grantees, experts, consultants, or others when access to the record is necessary to perform the function or service for which they have been engaged by the ODNI.

(n) A record from a system of records maintained by the ODNI may be disclosed as a routine use to a former staff of the ODNI for the purposes of responding to an official inquiry by a Federal, state, or local government entity or professional licensing authority or facilitating communications with a former staff of the ODNI that may be necessary for personnel-related or other official purposes when the ODNI requires information or consultation assistance, or both, from the former staff regarding a matter within that person's former area of responsibility.

(o) A record from a system of records maintained by the ODNI may be disclosed as a routine use to legitimate foreign, international or multinational security, investigatory, law enforcement or administrative authorities in order to comply with requirements imposed by, or to claim rights conferred in, formal agreements and arrangements to include those regulating the stationing and status in foreign countries of Department of Defense military and civilian personnel.

(p) A record from a system of records maintained by the ODNI may be disclosed as a routine use to any Federal agency when documents or other information obtained from that agency are used in compiling the record and the record is relevant to the official responsibilities of that agency, provided that disclosure of the recompiled or enhanced record to the source agency is otherwise authorized and lawful.

(q) A record from a system of records maintained by the ODNI may be disclosed as a routine use to appropriate agencies, entities, and persons when: The security or confidentiality of information in the system of records has or may have been compromised; and the compromise may result in economic or material harm to individuals (e.g., identity theft or fraud), or harm to the security or integrity of the affected information or information technology systems or programs (whether or not belonging to the ODNI) that rely upon the compromised information; and disclosure is necessary to enable ODNI to address the cause(s) of the compromise and to prevent, minimize, or remedy potential harm resulting from the compromise.

(r) A record from a system of records maintained by the ODNI may be disclosed as a routine use to a Federal, state, local, tribal, territorial, foreign, or multinational agency or entity or to any other appropriate entity or individual for any of the following purposes: to provide notification of a serious terrorist threat for the purpose of guarding against or responding to such threat; to assist in coordination of terrorist threat awareness, assessment, analysis, or response; or to assist the recipient in performing authorized responsibilities relating to terrorism or counterterrorism.

(s) A record from a system of records maintained by the ODNI may be disclosed as a routine use for the purpose of conducting or supporting authorized counterintelligence activities as defined by section 401a(3) of the National Security Act of 1947, as amended, to elements of the Intelligence Community, as defined by section 401a(4) of the National Security Act of 1947, as amended; to the head of any Federal agency or department; to selected counterintelligence officers within the Federal government.

(t) A record from a system of records maintained by the ODNI may be disclosed as a routine use to a Federal, state, local, tribal, territorial, foreign, or multinational government agency or entity, or to other authorized entities or individuals, but only if such disclosure is undertaken in furtherance of responsibilities conferred by, and in a manner consistent with, the National Security Act of 1947, as amended; the Counterintelligence Enhancement Act of 2002, as amended; Executive Order 12333 or any successor order together with its implementing procedures approved by the Attorney General; and other provisions of law, Executive Order or directive relating to national intelligence or otherwise applicable to the ODNI. This routine use is not intended to supplant the other routine uses published by the ODNI.

PART 1702—PROCEDURES GOVERNING THE ACCEPTANCE OF SERVICE OF PROCESS

Sec.

1702.1 Scope and purpose.
1702.2 Definitions.
1702.3 Procedures governing acceptance of service of process.
1702.4 Notification to Office of General Counsel.
1702.5 Interpretation.

AUTHORITY: The Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108–458, 118 Stat. 3638 (2004); National Security Act of 1947, as amended, 50 U.S.C. § 401 *et seq.*; Executive Order 12333, as amended.

SOURCE: 74 FR 11479, Mar. 18, 2009, unless otherwise noted.

§ 1702.1 Scope and purpose.

This part sets forth the ODNI policy concerning service of process upon the ODNI and ODNI employees in their official, individual or combined official and individual capacities. This part is intended to ensure the orderly execution of ODNI affairs and is not intended to impede the legal process.

§ 1702.2 Definitions.

For purposes of this part the following terms have the following meanings:

DNI. The Director of National Intelligence.

General Counsel. The ODNI's General Counsel, Acting General Counsel or Deputy General Counsel.

ODNI. The Office of the Director of National Intelligence and all of its components, including, but not limited to, the National Counterintelligence

Executive, the National Counterterrorism Center, the National Counterproliferation Center, the Program Manager for the Information Sharing Environment, and all national intelligence centers and program managers the DNI may establish.

ODNI Employee. Any current or former employee, contractor, independent contractor, assignee or detailee to the ODNI.

OGC. The Office of the General Counsel of the ODNI.

Process. A summons, complaint, subpoena or other document properly issued by or under the authority of, a federal, state, local or other government entity of competent jurisdiction.

§ 1702.3 Procedures governing acceptance of service of process.

(a) Service of process upon the ODNI or an ODNI employee in the employee's official capacity.

(1) Personal service. Unless otherwise expressly authorized by the General Counsel, personal service of process upon the ODNI or an ODNI employee in the employee's official capacity, may be accepted only by an OGC attorney at ODNI Headquarters. The OGC attorney shall write or stamp "Service Accepted In Official Capacity Only" on the return of service form.

(2) Mail service. Where service of process by registered or certified mail is authorized by law, only an OGC attorney may accept such service of process upon the ODNI or an ODNI employee in the employee's official capacity, unless otherwise expressly authorized by the General Counsel. The OGC attorney shall write or stamp, "Service Accepted In Official Capacity Only," on the waiver of personal service form. Service of process by mail must be addressed to the Office of the Director of National Intelligence, Office of General Counsel, Washington, DC 20511, and the envelope must be conspicuously marked "Service of Process."

(b) Service of process upon an ODNI employee solely in the employee's individual capacity.

(1) *Generally*. ODNI employees will not be required to accept service of process in their purely individual capacity on ODNI facilities or premises.

(2) *Personal Service*. Subject to the sole discretion of the General Counsel, process servers generally will not be allowed to enter ODNI facilities or premises for the purpose of serving process upon an ODNI employee solely in the employee's individual capacity. Except for the DNI, the Principal Deputy Director of National Intelligence, and the Director of the Intelligence Staff, the OGC is not authorized to accept service of process on behalf of any ODNI employee in the employee's individual capacity.

(3) *Mail Service*. Unless otherwise expressly authorized by the General Counsel, ODNI employees are not authorized to accept or forward mailed service of process directed to another ODNI employee in that employee's individual capacity. Any such process will be returned to the sender via appropriate postal channels.

(c) Service of Process Upon an ODNI employee in a combined official and individual capacity. Unless otherwise expressly authorized by the General Counsel, service of process, in person or by mail, upon an ODNI employee in the employee's combined official and individual capacity, may be accepted only for the ODNI employee in the employee's official capacity by an OGC attorney at ODNI Headquarters. The OGC attorney shall write or stamp, "Service Accepted In Official Capacity Only," on the return of service form.

(d) Acceptance of service of process shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue or any other defense in law or equity available under the laws or rules applicable to the service of process.

§ 1702.4 Notification to Office of General Counsel.

An ODNI employee who receives or has reason to expect to receive, service of process in an official, individual or combined individual and official capacity in a matter that may involve testimony or the furnishing of documents that could reasonably be expected to involve ODNI interests, shall promptly notify the OGC ((703) 275–2527) prior to responding to the service in any manner, and if possible, before accepting service.

§ 1702.5 Interpretation.

Any questions concerning interpretation of this regulation shall be referred to the Office of General Counsel for resolution.

PART 1703—PRODUCTION OF ODNI INFORMATION OR MATERIAL IN PROCEEDINGS BEFORE FEDERAL, STATE, LOCAL OR OTHER GOVERNMENT ENTITY OF COMPETENT JURISDICTION

Sec.
1703.1 Scope and purpose.
1703.2 Definitions.
1703.3 General.
1703.4 Procedure for production.
1703.5 Interpretation.

AUTHORITY: The Intelligence Reform and Terrorism Prevention Act of 2004, Public Law No. 108–458, 118 Stat. 3638 (2004); National Security Act of 1947, as amended, 50 U.S.C. 401 *et seq.*; Executive Order 12333, as amended; and *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

SOURCE: 74 FR 11480, Mar. 18, 2009, unless otherwise noted.

§ 1703.1 Scope and purpose.

This part sets forth the policy and procedures with respect to the production or disclosure of material contained in the files of the ODNI, information relating to or based upon material contained in the files of the ODNI, and information acquired by any person while such person was an employee of the ODNI as part of the performance of that person's official duties or because of that person's association with the ODNI.

§ 1703.2 Definitions.

The following definitions apply to this part:

Defenses: Any and all legal defenses, privileges or objections available to the ODNI in response to a demand.

Demand:

(1) Any subpoena, order or other legal summons issued by a federal, state, local or other government entity of competent jurisdiction with the authority to require a response on a particular matter or a request for appearance of an individual where a demand could issue.

(2) Any request for production or disclosure which may result in the issuance of a subpoena, order, or other legal process to compel production or disclosure.

DNI: The Director of National Intelligence.

General Counsel: The ODNI's General Counsel, Acting General Counsel or Deputy General Counsel.

ODNI: The Office of the Director of National Intelligence and all of its components, including, but not limited to, the Office of the National Counterintelligence Executive, the National Counterterrorism Center, the National Counterproliferation Center, the Program Manager for the Information Sharing Environment, and all national intelligence centers and program managers the DNI may establish.

ODNI Employee: Any current or former employee, contractor, independent contractor, assignee or detailee to the ODNI.

ODNI Information or Material: Information or material that is contained in ODNI files, related to or based upon material contained in ODNI files or acquired by any ODNI employee as part of that employee's official duties or because of that employee's association with the ODNI.

OGC: The Office of the General Counsel of the ODNI.

OGC Attorney: Any attorney in the OGC.

Proceeding: Any matter before a court of law, administrative law judge, administrative tribunal or commission or other body that conducts legal or administrative proceedings, and includes all phases of the proceeding.

Production or Produce: The disclosure of ODNI information or material in response to a demand.

§ 1703.3 General.

(a) No ODNI employee shall respond to a demand for ODNI information or material without prior authorization as set forth in this part.

(b) This part is intended only to provide procedures for responding to demands for production of documents or information, and does not create any right or benefit, substantive or procedural, enforceable by any party against the United States.

§ 1703.4 Procedure for production.

(a) Whenever a demand is made for ODNI information or material, the employee who received the demand shall immediately notify OGC ((703) 275–2527). The OGC and the ODNI employee shall then follow the procedures set forth in this section.

(b) The OGC may assert any and all defenses before any search for potentially responsive ODNI information or material begins. Further, in its sole discretion the ODNI may decline to begin a search for potentially responsive ODNI information or material until a final and non-appealable disposition of any or all of the asserted defenses is made by the federal, state, local or government entity of competent jurisdiction. When the OGC determines that it is appropriate to search for potentially responsive ODNI information and material, the OGC will forward the demand to the appropriate ODNI offices or entities with responsibility for the ODNI information or material sought in the demand. Those ODNI offices or entities shall then search for and provide to the OGC all potentially responsive ODNI information and material. The OGC may then assert any and all defenses to the production of what it determines is responsive ODNI information or material.

(c) In reaching a decision on whether to produce responsive ODNI information or material, or to object to the demand, the OGC shall consider whether:

(1) Any relevant privileges are applicable;

(2) The applicable rules of discovery or procedure require production;

(3) Production would violate a statute, regulation, executive order or other provision of law;

(4) Production would violate a nondisclosure agreement;

(5) Production would be inconsistent with the DNI's responsibility to protect intelligence sources and methods, or reveal classified information or state secrets;

(6) Production would violate a specific ODNI policy issuance or instruction; and

(7) Production would unduly interfere with the orderly conduct of ODNI functions.

(d) If oral or written testimony is sought by a demand in a case or matter in which the ODNI is not a party, a reasonably detailed description of the testimony sought in the form of an affidavit, or a written statement if that is not feasible, by the party seeking the testimony or its attorney must be furnished to the OGC.

(e) The OGC shall notify the appropriate employees of all decisions regarding responses to demands and provide advice and counsel for the implementation of the decisions.

(f) If response to a demand is required before a decision is made whether to provide responsive ODNI information or material, an OGC attorney will request that a Department of Justice attorney appear with the ODNI employee upon whom that demand has been made before the court or other competent authority and provide it with a copy of this regulation and inform the court or other authority as to the status of the demand. The court will be requested to stay the demand pending resolution by the ODNI. If the request for a stay is denied or there is a ruling that the demand must be complied with irrespective of instructions rendered in accordance with this Part, the employee upon whom the demand was made shall, if directed to do so by the General Counsel or its designee, respectfully decline to comply with the demand under the authority of *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951), and this regulation.

(g) ODNI officials may delegate in writing any authority given to them in this part to subordinate officials.

(h) Any individual or entity not an ODNI employee as defined in this part who receives a demand for the production or disclosure of ODNI information or material acquired because of that person's or entity's association with the ODNI should notify the OGC ((703) 275–2527) for guidance and assistance. In such cases the provisions of this regulation shall be applicable.

§ 1703.5 Interpretation.

Any questions concerning interpretation of this Regulation shall be referred to the OGC for resolution.

CHAPTER XVIII—NATIONAL COUNTERINTELLIGENCE CENTER

Part		*Page*
1800	Public access to NACIC records under the Freedom of Information Act (FOIA)	409
1801	Public rights under the Privacy Act of 1974	418
1802	Challenges to classification of documents by authorized holders pusuant to section 1.9 of Executive Order 12958	426
1803	Public requests for mandatory declassification review of classified information pusuant to section 3.6 of Executive Order 12958	429
1804	Access by historical researchers and former presidential appointees pusuant to section 4.5 of Executive Order 12958	433
1805	Production of official records or disclosure of official information in proceedings before Federal, State or local Government entities of competent juridiction	436
1806	Procedures governing acceptance of service of process	438
1807	Enforcement of nondiscrimination on the basis of disability in programs or activities conducted by the National Counterintelligence Center	439

PART 1800—PUBLIC ACCESS TO NACIC RECORDS UNDER THE FREEDOM OF INFORMATION ACT (FOIA)

Subpart A—General

Sec.
1800.1 Authority and purpose.
1800.2 Definitions.
1800.3 Contact for general information and requests.
1800.4 Suggestions and complaints.

Subpart B—Filing of FOIA Requests

1800.11 Preliminary information.
1800.12 Requirements as to form and content.
1800.13 Fees for record services.
1800.14 Fee estimates (pre-request option).

Subpart C—NACIC Action on FOIA Requests

1800.21 Processing of requests for records.
1800.22 Action and determination(s) by originator(s) or any interested party.
1800.23 Payment of fees, notification of decision, and right of appeal.

Subpart D—Additional Administrative Matters

1800.31 Procedures for business information.
1800.32 Procedures for information concerning other persons.
1800.33 Allocation of resources; agreed extensions of time.
1800.34 Requests for expedited processing.

Subpart E—NACIC Action on FOIA Administrative Appeals

1800.41 Appeal authority.
1800.42 Right of appeal and appeal procedures.
1800.43 Determination(s) by Office Chief(s).
1800.44 Action by appeals authority.
1800.45 Notification of decision and right of judicial review.

AUTHORITY: 5 U.S.C. 552.

SOURCE: 64 FR 49879, Sept. 14, 1999, unless otherwise noted.

Subpart A—General

§ 1800.1 Authority and purpose.

This part is issued under the authority of and in order to implement the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552); and section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403). It prescribes procedures for:

(a) Requesting information on available NACIC records, or NACIC administration of the FOIA, or estimates of fees that may become due as a result of a request;

(b) Requesting records pursuant to the FOIA; and

(c) Filing an administrative appeal of an initial adverse decision under the FOIA.

§ 1800.2 Definitions.

For purposes of this part, the following terms have the meanings indicated:

NACIC means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator;

Days means calendar days when NACIC is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; otherwise ten (10) days may be added if responding by international mail;

Control means ownership or the authority of NACIC pursuant to federal statute or privilege to regulate official or public access to records;

Coordinator means the NACIC Information and Privacy Coordinator who serves as the NACIC manager of the information review and release program instituted under the Freedom of Information Act;

Direct-costs means those expenditures which an agency actually incurs in the processing of a FOIA request; it does not include overhead factors such as space; it does include:

(1) *Pages* means paper copies of standard office size or the dollar value equivalent in other media;

(2) *Reproduction* means generation of a copy of a requested record in a form appropriate for release;

(3) *Review* means all time expended in examining a record to determine whether any portion must be withheld pursuant to law and in effecting any required deletions but excludes personnel hours expended in resolving general legal or policy issues; it also

means personnel hours of professional time;

(4) *Search* means all time expended in looking for and retrieving material that may be responsive to a request utilizing available paper and electronic indices and finding aids; it also means personnel hours of professional time or the dollar value equivalent in computer searches;

Expression of interest means a written communication submitted by a member of the public requesting information on or concerning the FOIA program and/or the availability of documents from NACIC;

Federal agency means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

Fees means those direct costs which may be assessed a requester considering the categories established by the FOIA; requesters should submit information to assist NACIC in determining the proper fee category and NACIC may draw reasonable inferences from the identity and activities of the requester in making such determinations; the fee categories include:

(1) *Commercial* means a request in which the disclosure sought is primarily in the commercial interest of the requester and which furthers such commercial, trade, income or profit interests;

(2) *Non-commercial educational or scientific institution* means a request from an accredited United States educational institution at any academic level or institution engaged in research concerning the social, biological, or physical sciences or an instructor or researcher or member of such institutions; it also means that the information will be used in a specific scholarly or analytical work, will contribute to the advancement of public knowledge, and will be disseminated to the general public;

(3) *Representative of the news media* means a request from an individual actively gathering news for an entity that is organized and operated to publish and broadcast news to the American public and pursuant to their news dissemination function and not their commercial interests; the term *news* means information which concerns current events, would be of current interest to the general public, would enhance the public understanding of the operations or activities of the U.S. Government, and is in fact disseminated to a significant element of the public at minimal cost; freelance journalists are included in this definition if they can demonstrate a solid basis for expecting publication through such an organization, even though not actually employed by it; a publication contract or prior publication record is relevant to such status;

(4) *All other* means a request from an individual not within categories (h)(1), (2), or (3) of this section;

Freedom of Information Act or "*FOIA*" means the statutes as codified at 5 U.S.C. 552;

Interested party means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of NACIC, has a subject matter or physical interest in the documents or information at issue;

Originator means the U.S. Government official who originated the document at issue or successor in office or such official who has been delegated release or declassification authority pursuant to law;

Potential requester means a person, organization, or other entity who submits an expression of interest;

Reasonably described records means a description of a document (record) by unique identification number or descriptive terms which permit a NACIC employee to locate documents with reasonable effort given existing indices and finding aids;

Records or agency records means all documents, irrespective of physical or electronic form, made or received by NACIC in pursuance of federal law or in connection with the transaction of public business and appropriate for preservation by NACIC as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of NACIC or because of the informational value of the data contained therein; it does not include:

(1) Books, newspapers, magazines, journals, magnetic or printed transcripts of electronic broadcasts, or similar public sector materials acquired generally and/or maintained for library or reference purposes; to the extent that such materials are incorporated into any form of analysis or otherwise distributed or published by NACIC, they are fully subject to the disclosure provisions of the FOIA;

(2) Index, filing, or museum documents made or acquired and preserved solely for reference, indexing, filing, or exhibition purposes; and

(3) Routing and transmittal sheets and notes and filing or destruction notes which do not also include information, comment, or statements of substance;

Responsive records means those documents (i.e., records) which NACIC has determined to be within the scope of a FOIA request.

§ 1800.3 Contact for general information and requests.

For general information on this part, to inquire about the FOIA program at NACIC, or to file a FOIA request (or expression of interest), please direct your communication in writing to the Information and Privacy Coordinator, Executive Secretariat Office, National Counterintelligence Center, 3W01 NHB, Washington, DC 20505. Such inquiries will also be accepted by facsimile at (703)874–5844. For general information or status information on pending cases only, the telephone number is (703)874–4121. Collect calls cannot be accepted.

§ 1800.4 Suggestions and complaints.

NACIC welcomes suggestions or complaints with regard to its administration of the Freedom of Information Act. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. NACIC will respond to all substantive communications and take such actions as determined feasible and appropriate.

Subpart B—Filing of FOIA Requests

§ 1800.11 Preliminary information.

Members of the public shall address all communications to the NACIC Coordinator as specified at § 1800.03 and clearly delineate the communication as a request under the Freedom of Information Act and this regulation. NACIC employees receiving a communication in the nature of a FOIA request shall expeditiously forward same to the Coordinator. Requests and appeals on requests, referrals, or coordinations received from members of the public who owe outstanding fees for information services at this or other federal agencies will not be accepted and action on all pending requests shall be terminated in such circumstances.

§ 1800.12 Requirements as to form and content.

(a) *Required information*. No particular form is required. A request need only reasonably describe the records of interest. This means that documents must be described sufficiently to enable a professional employee familiar with the subject to locate the documents with a reasonable effort. Commonly this equates to a requirement that the documents must be locatable through the indexing of our various systems. Extremely broad or vague requests or requests requiring research do not satisfy this requirement.

(b) *Additional information for fee determination*. In addition, a requester should provide sufficient personal identifying information to allow us to determine the appropriate fee category. A requester should also provide an agreement to pay all applicable fees or fees not to exceed a certain amount or request a fee waiver.

(c) *Otherwise*. Communications which do not meet these requirements will be considered an expression of interest and NACIC will work with, and offer suggestions to, the potential requester in order to define a request properly.

§ 1800.13 Fees for record services.

(a) *In general*. Search, review, and reproduction fees will be charged in accordance with the provisions below relating to schedule, limitations, and category of requester. Applicable fees will be due even if our search locates no responsive records or some or all of the responsive records must be denied under one or more of the exemptions of the Freedom of Information Act.

(b) *Fee waiver requests.* Records will be furnished without charge or at a reduced rate whenever NACIC determines:

(1) That, as a matter of administrative discretion, the interest of the United States Government would be served, or

(2) That it is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester; NACIC shall consider the following factors when making this determination:

(i) Whether the subject of the request concerns the operations or activities of the United States Government; and, if so,

(ii) Whether the disclosure of the requested documents is likely to contribute to an understanding of United States Government operations or activities; and, if so,

(iii) Whether the disclosure of the requested documents will contribute to public understanding of United States Government operations or activities; and, if so,

(iv) Whether the disclosure of the requested documents is likely to contribute significantly to public understanding of United States Government operations and activities; and

(v) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(vi) Whether the disclosure is primarily in the commercial interest of the requester.

(c) *Fee waiver appeals.* Denials of requests for fee waivers or reductions may be appealed to the Director, NACIC via the Coordinator. A requester is encouraged to provide any explanation or argument as to how his or her request satisfies the statutory requirement set forth in paragraph (b) of this section.

(d) *Time for fee waiver requests and appeals.* It is suggested that such requests and appeals be made and resolved prior to the initiation of processing and the incurring of costs. However, fee waiver requests will be accepted at any time prior to the release of documents or the completion of a case, and fee waiver appeals within forty-five (45) days of our initial decision subject to the following condition: if processing has been initiated, then the requester must agree to be responsible for costs in the event of an adverse administrative or judicial decision.

(e) *Agreement to pay fees.* In order to protect requesters from large and/or unanticipated charges, NACIC will request specific commitment when it estimates that fees will exceed $100.00. NACIC will hold in abeyance for forty-five (45) days requests requiring such agreement and will thereafter deem the request closed. This action, of course, would not prevent an individual from refiling his or her FOIA request with a fee commitment at a subsequent date.

(f) *Deposits.* NACIC may require an advance deposit of up to 100 percent of the estimated fees when fees may exceed $250.00 and the requester has no history of payment, or when, for fees of any amount, there is evidence that the requester may not pay the fees which would be accrued by processing the request. NACIC will hold in abeyance for forty-five (45) days those requests where deposits have been requested.

(g) *Schedule of fees*—(1) *In general.* The schedule of fees for services performed in responding to requests for records is established as follows:

(i) Personnel Search and Review

Clerical/Technical__Quarter hour__$ 5.00__Professional/Supervisory__Quarter hour__ 10.00___Manager/Senior Professional__Quarter hour__18.00

(ii) Computer Search and Production

Search (on-line)__Flat rate__10.00__Search (off-line)__Flat rate__30.00__Other activity__Per minute__10.00__Tapes (mainframe cassette)__Each__9.00__Tapes (mainframe cartridge)__Each__9.00__Tapes (mainframe reel)__Each__20.00__Tapes (PC 9mm)__Each__25.00__Diskette (3.5″) __Each__4.00__CD (bulk recorded)__Each__10.00__CD (recordable)__Each__20.00__ Telecommunications __Per minute__.50__ Paper (mainframe printer)__Per page__.10__Paper (PC b&w laser printer)__Per page__.10__Paper (PC color printer)__Per page__1.00

(iii) Paper Production

Photocopy (standard or legal)__Per page__.10__Microfiche__Per frame__.20__Pre-

printed (if available)__Per 100 pages__5.00__Published (if available)__Per item__NTIS__

(2) *Application of schedule.* Personnel search time includes time expended in either manual paper records searches, indices searches, review of computer search results for relevance, personal computer system searches, and various reproduction services. In any event where the actual cost to NACIC of a particular item is less than the above schedule (e.g., a large production run of a document resulted in a cost less than $5.00 per hundred pages), then the actual lesser cost will be charged.

(3) *Other services.* For all other types of output, production, or reproduction (e.g., photographs, maps, or published reports), actual cost or amounts authorized by statute. Determinations of actual cost shall include the commercial cost of the media, the personnel time expended in making the item to be released, and an allocated cost of the equipment used in making the item, or, if the production is effected by a commercial service, then that charge shall be deemed the actual cost for purposes of this part.

(h) *Limitations on collection of fees*—(1) *In general.* No fees will be charged if the cost of collecting the fee is equal to or greater than the fee itself. That cost includes the administrative costs to NACIC of billing, receiving, recording, and processing the fee for deposit to the Treasury Department and, as of the date of these regulations, is deemed to be $10.00.

(2) *Requests for personal information.* No fees will be charged for requesters seeking records about themselves under the FOIA; such requests are processed in accordance with both the FOIA and the Privacy Act in order to ensure the maximum disclosure without charge.

(i) *Fee categories.* There are four categories of FOIA requesters for fee purposes: "commercial use" requesters, "educational and non-commercial scientific institution" requesters, "representatives of the news media" requesters, and "all other" requesters. The categories are defined in § 1800.2, and applicable fees, which are the same in two of the categories, will be assessed as follows:

(1) "Commercial use" requesters: Charges which recover the full direct costs of searching for, reviewing, and duplicating responsive records (if any);

(2) "Educational and non-commercial scientific institution" requesters as well as "representatives of the news media" requesters: Only charges for reproduction beyond the first 100 pages;

(3) "All other" requesters: Charges which recover the full direct cost of searching for and reproducing responsive records (if any) beyond the first 100 pages of reproduction and the first two hours of search time which will be furnished without charge.

(j) *Associated requests.* A requester or associated requesters may not file a series of multiple requests, which are merely discrete subdivisions of the information actually sought for the purpose of avoiding or reducing applicable fees. In such instances, NACIC may aggregate the requests and charge the applicable fees.

§ 1800.14 Fee estimates (pre-request option).

In order to avoid unanticipated or potentially large fees, a requester may submit a request for a fee estimate. Pursuant to the Electronic Freedom of Information Act Amendments of 1996, NACIC will endeavor within twenty (20) days to provide an accurate estimate, and, if a request is thereafter submitted, NACIC will not accrue or charge fees in excess of our estimate without the specific permission of the requester.

Subpart C—NACIC Action On FOIA Requests

§ 1800.21 Processing of requests for records.

(a) *In general.* Requests meeting the requirements of §§ 1800.11 through 1800.13 shall be accepted as formal requests and processed under the Freedom of Information Act, 5 U.S.C. 552, and these regulations. Pursuant to the Electronic Freedom of Information Act Amendments of 1996, upon receipt, NACIC shall within twenty (20) days record each request, acknowledge receipt to the requester in writing, and thereafter effect the necessary

taskings to the NACIC components reasonably believed to hold responsive records.

(b) *Database of "officially released information*." As an alternative to extensive tasking and as an accommodation to many requesters, NACIC maintains a database of "officially released information" which contains copies of documents released by NACIC. Searches of this database can be accomplished expeditiously. Moreover, requests that are specific and well-focused will often incur minimal, if any, costs. Requesters interested in this means of access should so indicate in their correspondence. Consistent with the mandate of the Electronic Freedom of Information Act Amendments of 1996, on-line electronic access to these records is available to the public. Detailed information regarding such access is available from the point of contact specified in § 1800.3.

(c) *Effect of certain exemptions*. In processing a request, NACIC shall decline to confirm or deny the existence or nonexistence of any responsive records whenever the fact of their existence or nonexistence is itself classified under Executive Order 12958 and may jeopardize intelligence sources or methods protected pursuant to section 103(c)(6) of the National Security Act of 1947. In such circumstances, NACIC, in the form of a final written response, shall so inform the requester and advise of his or her right to an administrative appeal.

(d) *Time for response*. Pursuant to the Electronic Freedom of Information Act Amendments of 1996, NACIC will utilize every effort to determine within the statutory guideline of twenty (20) days after receipt of an initial request whether to comply with such a request. However, should the volume of requests require that NACIC seek additional time from a requester pursuant to § 1800.33, NACIC will inform the requester in writing and further advise of his or her right to file an administrative appeal of any adverse determination.

§ 1800.22 Action and determination(s) by originator(s) or any interested party.

(a) *Initial action for access*. (1) NACIC components tasked pursuant to a FOIA request shall search all relevant record systems within their cognizance. They shall:

(i) Determine whether a record exists;

(ii) Determine whether and to what extent any FOIA exemptions apply;

(iii) Approve the disclosure of all non-exempt records or portions of records for which they are the originator; and

(iv) Forward to the Coordinator all records approved for release or necessary for coordination with or referral to another originator or interested party.

(2) In making these decisions, the NACIC component officers shall be guided by the applicable law as well as the procedures specified at § 1800.31 and § 1800.32 regarding confidential commercial information and personal information (about persons other than the requester).

(b) *Referrals and coordinations*. As applicable and within twenty (20) days, pursuant to the Electronic Freedom of Information Act Amendments of 1996, of receipt by the Coordinator, any NACIC records containing information originated by other NACIC components shall be forwarded to those entities for action in accordance with paragraph (a) of this section and return. Records originated by other federal agencies or NACIC records containing other federal agency information shall be forwarded to such agencies within twenty (20) days of our completion of initial action in the case for action under their regulations and direct response to the requester (for other agency records) or return to NACIC (for NACIC records).

§ 1800.23 Payment of fees, notification of decision, and right of appeal.

(a) *Fees in general*. Fees collected under this part do not accrue to the National Counterintelligence Center and shall be deposited immediately to the general account of the United States Treasury.

(b) *Notification of decision*. Upon completion of all required review and the

receipt of accrued fees (or promise to pay such fees), NACIC will promptly inform the requester in writing of those records or portions of records which may be released and which must be denied. With respect to the former, NACIC will provide copies; with respect to the latter, NACIC shall explain the reasons for the denial, identify the person(s) responsible for such decisions by name and title, and give notice of a right of administrative appeal.

(c) *Availability of reading room.* As an alternative to receiving records by mail, a requester may arrange to inspect the records deemed releasable at a NACIC "reading room" in the metropolitan Washington, DC area. Access will be granted after applicable and accrued fees have been paid. Requests to review or browse documents in our database of "officially released records" will also be honored in this manner to the extent that paper copies or electronic copies in unclassified computer systems exist. All such requests shall be in writing and addressed pursuant to § 1800.3. The records will be available at such times as mutually agreed but not less than three (3) days from our receipt of a request. The requester will be responsible for reproduction charges for any copies of records desired.

Subpart D—Additional Administrative Matters

§ 1800.31 Procedures for business information.

(a) *In general.* Business information obtained by NACIC by a submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. For purposes of this section, the following definitions apply:

Business information means commercial or financial information in which a legal entity has a recognized property interest;

Confidential commercial information means such business information provided to the United States Government by a submitter which is reasonably believed to contain information exempt from release under exemption (b)(4) of the Freedom of Information Act, 5 U.S.C. 552, because disclosure could reasonably be expected to cause substantial competitive harm;

Submitter means any person or entity who provides confidential commercial information to the United States Government; it includes, but is not limited to, corporations, businesses (however organized), state governments, and foreign governments; and

(b) *Designation of confidential commercial information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be confidential commercial information and hence protected from required disclosure pursuant to exemption (b)(4). Such designations shall expire ten (10) years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(c) *Process in event of FOIA request*—(1) *Notice to submitters.* NACIC shall provide a submitter with prompt written notice of receipt of a Freedom of Information Act request encompassing business information whenever:

(i) The submitter has in good faith designated the information as confidential commercial information, or

(ii) NACIC believes that disclosure of the information could reasonably be expected to cause substantial competitive harm, and

(iii) The information was submitted within the last ten (10) years unless the submitter requested and provided acceptable justification for a specific notice period of greater duration.

(2) *Form of notice.* This notice shall either describe the exact nature of the confidential commercial information at issue or provide copies of the responsive records containing such information.

(3) *Response by submitter.* (i) Within seven (7) days of the above notice, all claims of confidentiality by a submitter must be supported by a detailed statement of any objection to disclosure. Such statement shall:

(A) Specify that the information has not been disclosed to the public;

(B) Explain why the information is contended to be a trade secret or confidential commercial information;

(C) Explain how the information is capable of competitive damage if disclosed;

(D) State that the submitter will provide NACIC and the Department of Justice with such litigation defense as requested; and

(E) Be certified by an officer authorized to legally bind the corporation or similar entity.

(ii) It should be noted that information provided by a submitter pursuant to this provision may itself be subject to disclosure under the FOIA.

(4) *Decision and notice of intent to disclose.* (i) NACIC shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to its final determination. If NACIC decides to disclose a document over the objection of a submitter, NACIC shall provide the submitter a written notice which shall include:

(A) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(B) A description of the information to be disclosed; and

(C) A specified disclosure date which is seven (7) days after the date of the instant notice.

(ii) When notice is given to a submitter under this section, NACIC shall also notify the requester and, if NACIC notifies a submitter that it intends to disclose information, then the requester shall be notified also and given the proposed date for disclosure.

(5) *Notice of FOIA lawsuit.* If a requester initiates a civil action seeking to compel disclosure of information asserted to be within the scope of this section, NACIC shall promptly notify the submitter. The submitter, as specified above, shall provide such litigation assistance as required by NACIC and the Department of Justice.

(6) *Exceptions to notice requirement.* The notice requirements of this section shall not apply if NACIC determines that:

(i) The information should not be disclosed in light of other FOIA exemptions;

(ii) The information has been published lawfully or has been officially made available to the public;

(iii) The disclosure of the information is otherwise required by law or federal regulation; or

(iv) The designation made by the submitter under this section appears frivolous, except that, in such a case, NACIC will, within a reasonable time prior to the specified disclosure date, give the submitter written notice of any final decision to disclose the information.

[64 FR 49879, Sept. 14, 1999; 64 FR 53769, Oct. 4, 1999]

§ 1800.32 Procedures for information concerning other persons.

(a) *In general.* Personal information concerning individuals other than the requester shall not be disclosed under the Freedom of Information Act if the proposed release would constitute a clearly unwarranted invasion of personal privacy. See 5 U.S.C. 552(b)(6). For purposes of this section, the following definitions apply:

Personal information means any information about an individual that is not a matter of public record, or easily discernible to the public, or protected from disclosure because of the implications that arise from Government possession of such information.

Public interest means the public interest in understanding the operations and activities of the United States Government and not simply any matter which might be of general interest to the requester or members of the public.

(b) *Determination to be made.* In making the required determination under this section and pursuant to exemption (b)(6) of the FOIA, NACIC will balance the privacy interests that would be compromised by disclosure against the public interest in release of the requested information.

(c) *Otherwise.* A requester seeking information on a third person is encouraged to provide a signed affidavit or declaration from the third person waiving all or some of their privacy rights. However, all such waivers shall be narrowly construed and the Coordinator, in the exercise of his discretion and administrative authority, may seek clarification from the third party prior to any or all releases.

§ 1800.33 Allocation of resources; agreed extensions of time.

(a) *In general.* NACIC components shall devote such personnel and other resources to the responsibilities imposed by the Freedom of Information Act as may be appropriate and reasonable considering:

(1) The totality of resources available to the component,

(2) The business demands imposed on the component by the Director of NACIC or otherwise by law,

(3) The information review and release demands imposed by the Congress or other governmental authority, and

(4) The rights of all members of the public under the various information review and disclosure laws.

(b) *Discharge of FOIA responsibilities.* Components shall exercise due diligence in their responsibilities under the FOIA and must allocate a reasonable level of resources to requests under the Act in a strictly "first-in, first-out" basis and utilizing two or more processing queues to ensure that smaller as well as larger (i.e., project) cases receive equitable attention. The Information and Privacy Coordinator is responsible for management of the NACIC-wide program defined by this part and for establishing priorities for cases consistent with established law. The Director, NACIC shall provide policy and resource direction as necessary and render decisions on administrative appeals.

(c) *Requests for extension of time.* When NACIC is unable to meet the statutory time requirements of the FOIA, it will inform the requester that the request cannot be processed within the statutory time limits, provide an opportunity for the requester to limit the scope of the request so that it can be processed within the statutory time limits, or arrange with the requester an agreed upon time frame for processing the request, or determine that exceptional circumstances mandate additional time in accordance with the definition of "exceptional circumstances" per section 552(a)(6)(C) of the Freedom of Information Act, as amended, effective October 2, 1997. In such instances NACIC will, however, inform a requester of his or her right to decline our request and proceed with an administrative appeal or judicial review as appropriate.

§ 1800.34 Requests for expedited processing.

(a) *In general.* All requests will be handled in the order received on a strictly "first-in, first-out" basis. Exceptions to this section will only be made in accordance with the following procedures. In all circumstances, however, and consistent with established judicial precedent, requests more properly the scope of requests under the Federal Rules of Civil or Criminal Procedure (or other federal, state, or foreign judicial or quasi-judicial rules) will not be granted expedited processing under this or related (e.g., Privacy Act) provisions unless expressly ordered by a federal court of competent jurisdiction.

(b) *Procedure.* Requests for expedited processing will be approved only when a compelling need is established to the satisfaction of NACIC. A requester may make such a request with a certification of "compelling need" and, within ten (10) days of receipt, NACIC will decide whether to grant expedited processing and will notify the requester of its decision. The certification shall set forth with specificity the relevant facts upon which the requester relies and it appears to NACIC that substantive records relevant to the stated needs may exist and be deemed releasable. A "compelling need" is deemed to exist:

(1) When the matter involves an imminent threat to the life or physical safety of an individual; or

(2) When the request is made by a person primarily engaged in disseminating information and the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity.

Subpart E—NACIC Action On FOIA Administrative Appeals

§ 1800.41 Appeal authority.

The Director, NACIC will make final NACIC decisions from appeals of initial adverse decisions under the Freedom of Information Act and such other information release decisions made under parts 1801, 1802, and 1803 of this chapter. Matters decided by the Director,

NACIC will be deemed a final decision by NACIC.

§ 1800.42 Right of appeal and appeal procedures.

(a) *Right of Appeal.* A right of administrative appeal exists whenever access to any requested record or any portion thereof is denied, no records are located in response to a request, or a request for a fee waiver is denied. NACIC will apprise all requesters in writing of their right to appeal such decisions to the Director, NACIC through the Coordinator.

(b) *Requirements as to time and form.* Appeals of decisions must be received by the Coordinator within forty-five (45) days of the date of NACIC's initial decision. NACIC may, for good cause and as a matter of administrative discretion, permit an additional thirty (30) days for the submission of an appeal. All appeals shall be in writing and addressed as specified in § 1800.3. All appeals must identify the documents or portions of documents at issue with specificity and may present such information, data, and argument in support as the requester may desire.

(c) *Exceptions.* No appeal shall be accepted if the requester has outstanding fees for information services at this or another federal agency. In addition, no appeal shall be accepted if the information in question has been the subject of a review within the previous two (2) years or is the subject of pending litigation in the federal courts.

(d) *Receipt, recording, and tasking.* NACIC shall promptly record each request received under this part, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the office(s) which originated or has an interest in the record(s) subject to the appeal.

(e) *Time for response.* NACIC shall attempt to complete action on an appeal within twenty (20) days of the date of receipt. The volume of requests, however, may require that NACIC request additional time from the requester pursuant to § 1800.33. In such event, NACIC will inform the requester of the right to judicial review.

§ 1800.43 Determination(s) by Office Chief(s).

Each Office Chief in charge of an office which originated or has an interest in any of the records subject to the appeal, or designee, is a required party to any appeal; other interested parties may become involved through the request of the Coordinator when it is determined that some or all of the information is also within their official cognizance. These parties shall respond in writing to the Coordinator with a finding as to the exempt status of the information. This response shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the parties and consistent with the information rights of members of the general public under the various information review and release laws.

§ 1800.44 Action by appeals authority.

(a) *Preparation of docket.* The Coordinator shall provide a summation memorandum for consideration of the Director, NACIC; the complete record of the request consisting of the request, the document(s) (sanitized and full text) at issue, and the findings of concerned Office Chiefs or designee(s).

(b) *Decision by the Director, NACIC.* The Director, NACIC shall personally decide each case; no personal appearances shall be permitted without the express permission of the Director, NACIC.

§ 1800.45 Notification of decision and right of judicial review.

The Coordinator shall promptly prepare and communicate the decision of the Director, NACIC to the requester. With respect to any decision to deny information, that correspondence shall state the reasons for the decision, identify the officer responsible, and include a notice of a right to judicial review.

PART 1801—PUBLIC RIGHTS UNDER THE PRIVACY ACT OF 1974

Subpart A—General

Sec.

1801.1 Authority and purpose.
1801.2 Definitions.

1801.3 Contact for general information and requests.
1801.4 Suggestions and complaints.

Subpart B—Filing Of Privacy Act Requests

1801.11 Preliminary information.
1801.12 Requirements as to form.
1801.13 Requirements as to identification of requester.
1801.14 Fees.

Subpart C—Action On Privacy Act Requests

1801.21 Processing requests for access to or amendment of records.
1801.22 Action and determination(s) by originator(s) or any interested party.
1801.23 Notification of decision and right of appeal.

Subpart D—Additional Administrative Matters

1801.31 Special procedures for medical and psychological records.
1801.32 Requests for expedited processing.
1801.33 Allocation of resources; agreed extensions of time.

Subpart E—Action On Privacy Act Administrative Appeals

1801.41 Appeal authority.
1801.42 Right of appeal and appeal procedures.
1801.43 Determination(s) by Office Chief(s).
1801.44 Action by appeals authority.
1801.45 Notification of decision and right of judicial review.

Subpart F—Prohibitions

1801.51 Limitations on disclosure.
1801.52 Criminal penalties.

Subpart G—Exemptions

1801.63 Specific exemptions.

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 64 FR 49884, Sept. 14, 1999, unless otherwise noted.

Subpart A—General

§ 1801.1 Authority and purpose.

(a) *Authority*. This part is issued under the authority of and in order to implement the Privacy Act of 1974 (5 U.S.C. 552a) and section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403).

(b) *Purpose in general*. This part prescribes procedures for a requester, as defined herein:

(1) To request notification of whether the National Counterintellingence Center (NACIC) maintains a record concerning them in any non-exempt portion of a system of records or any non-exempt system of records;

(2) To request a copy of all non-exempt records or portions of records;

(3) To request that any such record be amended or augmented; and

(4) To file an administrative appeal to any initial adverse determination to deny access to or amend a record.

(c) *Other purposes*. This part also sets forth detailed limitations on how and to whom NACIC may disclose personal information and gives notice that certain actions by officers or employees of the United States Government or members of the public could constitute criminal offenses.

§ 1801.2 Definitions.

For purposes of this part, the following terms have the meanings indicated:

NACIC means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator;

Days means calendar days when NACIC is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

Control means ownership or the authority of NACIC pursuant to federal statute or privilege to regulate official or public access to records;

Coordinator means the NACIC Information and Privacy Coordinator who serves as the NACIC manager of the information review and release program instituted under the Privacy Act;

Federal agency means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

Interested party means any official in the executive, military, congressional, or judicial branches of government,

United States or foreign, or U.S. Government contractor who, in the sole discretion of NACIC, has a subject matter or physical interest in the documents or information at issue;

Maintain means maintain, collect, use, or disseminate;

Originator means the U.S. Government official who originated the document at issue or successor in office or such official who has been delegated release or declassification authority pursuant to law;

Privacy Act or *PA* means the statute as codified at 5 U.S.C. 552a;

Record means an item, collection, or grouping of information about an individual that is maintained by NACIC in a system of records;

Requester or *individual* means a citizen of the United States or an alien lawfully admitted for permanent residence who is a living being and to whom a record might pertain;

Responsive record means those documents (records) which NACIC has determined to be within the scope of a Privacy Act request;

Routine use means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which the record is maintained;

System of records means a group of any records under the control of NACIC from which records are retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to that individual.

§ 1801.3 Contact for general information and requests.

For general information on this part, to inquire about the Privacy Act program at NACIC, or to file a Privacy Act request, please direct your communication in writing to the Information and Privacy Coordinator, Executive Secretariat Office, National Counterintelligence Center, 3W01 NHB, Washington, DC 20505. Requests with the required identification statement pursuant to § 1801.13 must be filed in original form by mail. Subsequent communications and any inquiries will be accepted by mail or facsimile at (703) 874–5844 or by telephone at (703) 874–4121. Collect calls cannot be accepted.

§ 1801.4 Suggestions and complaints.

NACIC welcomes suggestions or complaints with regard to its administration of the Privacy Act. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. NACIC will respond to all substantive communications and take such actions as determined feasible and appropriate.

Subpart B—Filing Of Privacy Act Requests

§ 1801.11 Preliminary information.

Members of the public shall address all communications to the contact specified at § 1801.3 and clearly delineate the communication as a request under the Privacy Act and this regulation. Requests and administrative appeals on requests, referrals, and coordinations received from members of the public who owe outstanding fees for information services at this or other federal agencies will not be accepted and action on existing requests and appeals will be terminated in such circumstances.

§ 1801.12 Requirements as to form.

(a) *In general.* No particular form is required. All requests must contain the identification information required at § 1801.13.

(b) *For access.* For requests seeking access, a requester should, to the extent possible, describe the nature of the record sought and the record system(s) in which it is thought to be included. Requesters may find assistance from information described in the Privacy Act Issuances Compilation which is published biennially by the FEDERAL REGISTER. In lieu of this, a requester may simply describe why and under what circumstances it is believed that NACIC maintains responsive records; NACIC will undertake the appropriate searches.

(c) *For amendment.* For requests seeking amendment, a requester should identify the particular record or portion subject to the request, state a justification for such amendment, and provide the desired amending language.

§ 1801.13 Requirements as to identification of requester.

(a) *In general.* Individuals seeking access to or amendment of records concerning themselves shall provide their full (legal) name, address, date and place of birth, and current citizenship status together with a statement that such information is true under penalty of perjury or a notarized statement swearing to or affirming identity. If NACIC determines that this information is not sufficient, NACIC may request additional or clarifying information.

(b) *Requirement for aliens.* Only aliens lawfully admitted for permanent residence (PRAs) may file a request pursuant to the Privacy Act and this part. Such individuals shall provide, in addition to the information required under paragraph (a) of this section, their Alien Registration Number and the date that status was acquired.

(c) *Requirement for representatives.* The parent or guardian of a minor individual, the guardian of an individual under judicial disability, or an attorney retained to represent an individual shall provide, in addition to establishing the identity of the minor or individual represented as required in paragraph (a) or (b) of this section, evidence of such representation by submission of a certified copy of the minor's birth certificate, court order, or representational agreement which establishes the relationship and the requester's identity.

(d) *Procedure otherwise.* If a requester or representative fails to provide the information in paragraph (a), (b), or (c) of this section within forty-five (45) days of the date of our request, NACIC will deem the request closed. This action, of course, would not prevent an individual from refiling his or her Privacy Act request at a subsequent date with the required information.

§ 1801.14 Fees.

No fees will be charged for any action under the authority of the Privacy Act, 5 U.S.C. 552a, irrespective of the fact that a request is or may be processed under the authority of both the Privacy Act and the Freedom of Information Act.

Subpart C—Action On Privacy Act Requests

§ 1801.21 Processing requests for access to or amendment of records.

(a) *In general.* Requests meeting the requirements of § 1801.11 through § 1801.13 shall be processed under both the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a, and the applicable regulations, unless the requester demands otherwise in writing. Such requests will be processed under both Acts regardless of whether the requester cites one Act in the request, both, or neither. This action is taken in order to ensure the maximum possible disclosure to the requester.

(b) *Receipt, recording and tasking.* Upon receipt of a request meeting the requirements of §§ 1801.11 through 1801.13, NACIC shall within ten (10) days record each request, acknowledge receipt to the requester, and thereafter effect the necessary taskings to the office(s) reasonably believed to hold responsive records.

(c) *Effect of certain exemptions.* In processing a request, NACIC shall decline to confirm or deny the existence or nonexistence of any responsive records whenever the fact of their existence or nonexistence is itself classified under Executive Order 12958 and that confirmation of the existence of a record may jeopardize intelligence sources and methods protected pursuant to section 103(c)(6) of the National Security Act of 1947. In such circumstances, NACIC, in the form of a final written response, shall so inform the requester and advise of his or her right to an administrative appeal.

(d) *Time for response.* Although the Privacy Act does not mandate a time for response, our joint treatment of requests under both the Privacy Act and the FOIA means that the NACIC should provide a response within the FOIA statutory guideline of ten (10) days on initial requests and twenty (20) days on administrative appeals. However, the volume of requests may require that NACIC seek additional time from a requester pursuant to § 1801.33. In such event, NACIC will inform the requester in writing and further advise of his or

her right to file an administrative appeal.

§ 1801.22 Action and determination(s) by originator(s) or any interested party.

(a) *Initial action for access.* NACIC offices tasked pursuant to a Privacy Act access request shall search all relevant record systems within their cognizance. They shall:

(1) Determine whether responsive records exist;

(2) Determine whether access must be denied in whole or part and on what legal basis under both Acts in each such case;

(3) Approve the disclosure of records for which they are the originator; and

(4) Forward to the Coordinator all records approved for release or necessary for coordination with or referral to another originator or interested party as well as the specific determinations with respect to denials (if any).

(b) *Initial action for amendment.* NACIC offices tasked pursuant to a Privacy Act amendment request shall review the official records alleged to be inaccurate and the proposed amendment submitted by the requester. If they determine that NACIC's records are not accurate, relevant, timely or complete, they shall promptly:

(1) Make the amendment as requested;

(2) Write to all other identified persons or agencies to whom the record has been disclosed (if an accounting of the disclosure was made) and inform of the amendment; and

(3) Inform the Coordinator of such decisions.

(c) *Action otherwise on amendment request.* If the NACIC office records manager declines to make the requested amendment (or declines to make the requested amendment) but agrees to augment the official records, that manager shall promptly:

(1) Set forth the reasons for refusal; and

(2) Inform the Coordinator of such decision and the reasons therefore.

(d) *Referrals and coordinations.* As applicable and within ten (10) days of receipt by the Coordinator, any NACIC records containing information originated by other NACIC offices shall be forwarded to those entities for action in accordance with paragraphs (a), (b), or (c) of this section and return. Records originated by other federal agencies or NACIC records containing other federal information shall be forwarded to such agencies within ten (10) days of our completion of initial action in the case for action under their regulations and direct response to the requester (for other NACIC records) or return to NACIC (for NACIC records).

(e) *Effect of certain exemptions.* This section shall not be construed to allow access to systems of records exempted by the Director, NACIC pursuant to subsections (j) and (k) of the Privacy Act or where those exemptions require that NACIC can neither confirm nor deny the existence or nonexistence of responsive records.

§ 1801.23 Notification of decision and right of appeal.

Within ten (10) days of receipt of responses to all initial taskings and subsequent coordinations (if any), and dispatch of referrals (if any), NACIC will provide disclosable records to the requester. If a determination has been made not to provide access to requested records (in light of specific exemptions) or that no records are found, NACIC shall so inform the requester, identify the denying official, and advise of the right to administrative appeal.

Subpart D—Additional Administrative Matters

§ 1801.31 Special procedures for medical and psychological records.

(a) *In general.* When a request for access or amendment involves medical or psychological records and when the originator determines that such records are not exempt from disclosure, NACIC will, after consultation with the Director of Medical Services, CIA, determine:

(1) Which records may be sent directly to the requester and

(2) Which records should not be sent directly to the requester because of possible medical or psychological harm to the requester or another person.

(b) *Procedure for records to be sent to physician*. In the event that NACIC determines, in accordance with paragraph (a)(2) of this section, that records should not be sent directly to the requester, NACIC will notify the requester in writing and advise that the records at issue can be made available only to a physician of the requester's designation. Upon receipt of such designation, verification of the identity of the physician, and agreement by the physician:

(1) To review the documents with the requesting individual,

(2) To explain the meaning of the documents, and

(3) To offer counseling designed to temper any adverse reaction, NACIC will forward such records to the designated physician.

(c) *Procedure if physician option not available*. If within sixty (60) days of paragraph (a)(2) of this section, the requester has failed to respond or designate a physician, or the physician fails to agree to the release conditions, NACIC will hold the documents in abeyance and advise the requester that this action may be construed as a technical denial. NACIC will also advise the requester of the responsible official and of his or her rights to administrative appeal and thereafter judicial review.

§ 1801.32 Requests for expedited processing.

(a) All requests will be handled in the order received on a strictly "first-in, first-out" basis. Exceptions to this rule will only be made in circumstances that NACIC deems to be exceptional. In making this determination, NACIC shall consider and must decide in the affirmative on all of the following factors:

(1) That there is a genuine need for the records; and

(2) That the personal need is exceptional; and

(3) That there are no alternative forums for the records sought; and

(4) That it is reasonably believed that substantive records relevant to the stated needs may exist and be deemed releasable.

(b) In sum, requests shall be considered for expedited processing only when health, humanitarian, or due process considerations involving possible deprivation of life or liberty create circumstances of exceptional urgency and extraordinary need. In accordance with established judicial precedent, requests more properly the scope of requests under the Federal Rules of Civil or Criminal Procedure (or equivalent state rules) will not be granted expedited processing under this or related (e.g., Freedom of Information Act) provisions unless expressly ordered by a federal court of competent jurisdiction.

§ 1801.33 Allocation of resources; agreed extensions of time.

(a) *In general*. NACIC components shall devote such personnel and other resources to the responsibilities imposed by the Privacy Act as may be appropriate and reasonable considering:

(1) The totality of resources available to the component,

(2) The business demands imposed on the component by the Director, NACIC or otherwise by law,

(3) The information review and release demands imposed by the Congress or other governmental authority, and

(4) The rights of all members of the public under the various information review and disclosure laws.

(b) *Discharge of Privacy Act responsibilities*. Offices shall exercise due diligence in their responsibilities under the Privacy Act and must allocate a reasonable level of resources to requests under the Act in a strictly "first-in, first-out" basis and utilizing two or more processing queues to ensure that smaller as well as larger (i.e., project) cases receive equitable attention. The Information and Privacy Coordinator is responsible for management of the NACIC-wide program defined by this part and for establishing priorities for cases consistent with established law. The Director, NACIC shall provide policy and resource direction as necessary and shall render decisions on administrative appeals.

(c) *Requests for extension of time*. While the Privacy Act does not specify time requirements, our joint treatment of requests under the FOIA means that when NACIC is unable to meet the statutory time requirements of the FOIA, NACIC may request additional

time from a requester. In such instances NACIC will inform a requester of his or her right to decline our request and proceed with an administrative appeal or judicial review as appropriate.

Subpart E—Action On Privacy Act Administrative Appeals

§ 1801.41 Appeal authority.

The Director, NACIC will make final NACIC decisions from appeals of initial adverse decisions under the Privacy Act and such other information release decisions made under 32 CFR parts 1800, 1802, and 1803 of this chapter. Matters decided by the Director, NACIC will be deemed a final decision by NACIC.

§ 1801.42 Right of appeal and appeal procedures.

(a) *Right of Appeal.* A right of administrative appeal exists whenever access to any requested record or any portion thereof is denied, no records are located in response to a request, or a request for amendment is denied. NACIC will apprise all requesters in writing of their right to appeal such decisions to the Director, NACIC through the Coordinator.

(b) *Requirements as to time and form.* Appeals of decisions must be received by the Coordinator within forty-five (45) days of the date of NACIC's initial decision. NACIC may, for good cause and as a matter of administrative discretion, permit an additional thirty (30) days for the submission of an appeal. All appeals to the Director, NACIC shall be in writing and addressed as specified in § 1801.3. All appeals must identify the documents or portions of documents at issue with specificity, provide the desired amending language (if applicable), and may present such information, data, and argument in support as the requester may desire.

(c) *Exceptions.* No appeal shall be accepted if the requester has outstanding fees for information services at this or another federal agency. In addition, no appeal shall be accepted if the information in question has been the subject of an administrative review within the previous two (2) years or is the subject of pending litigation in the federal courts.

(d) *Receipt, recording, and tasking.* NACIC shall promptly record each administrative appeal, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the office chief in charge of the office(s) which originated or has an interest in the record(s) subject to the appeal.

§ 1801.43 Determination(s) by Office Chiefs.

Each Office Chief in charge of an office which originated or has an interest in any of the records subject to the appeal, or designee, is a required party to any appeal; other interested parties may become involved through the request of the Coordinator when it is determined that some or all of the information is also within their official cognizance. These parties shall respond in writing to the Coordinator with a finding as to the exempt or non-exempt status of the information including citations to the applicable exemption and/or their agreement or disagreement as to the requested amendment and the reasons therefore. Each response shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the parties and consistent with the information rights of members of the general public under the various information review and release laws.

§ 1801.44 Action by appeals authority.

(a) *Preparation of docket.* The Coordinator shall provide a summation memorandum for consideration of the Director, NACIC; the complete record of the request consisting of the request, the document(s) (sanitized and full text) at issue, and the findings of any concerned office chiefs or designee(s).

(b) *Decision by the Director, NACIC.* The Director, NACIC shall personally decide each case; no personal appearances shall be permitted without the express permission of the Director, NACIC.

§ 1801.45 Notification of decision and right of judicial review.

(a) *In general.* The Coordinator shall promptly prepare and communicate the decision of the Director, NACIC to the requester. With respect to any decision to deny information or deny amendment, that correspondence shall state the reasons for the decision, identify the officer responsible, and include a notice of the right to judicial review.

(b) *For amendment requests.* With further respect to any decision to deny an amendment, that correspondence shall also inform the requester of the right to submit within forty-five (45) days a statement of his or her choice which shall be included in the official records of NACIC. In such cases, the applicable record system manager shall clearly note any portion of the official record which is disputed, append the requester's statement, and provide copies of the statement to previous recipients (if any are known) and to any future recipients when and if the disputed information is disseminated in accordance with a routine use.

Subpart F—Prohibitions

§ 1801.51 Limitations on disclosure.

No record which is within a system of records shall be disclosed by any means of communication to any individual or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be:

(a) To those officers and employees of NACIC which maintains the record who have a need for the record in the performance of their duties;

(b) Required under the Freedom of Information Act, 5 U.S.C. 552;

(c) For a routine use as defined in § 1801.02(m), as contained in the Privacy Act Issuances Compilation which is published biennially in the FEDERAL REGISTER, and as described in sections (a)(7) and (e)(4)(D) of the Act;

(d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of U.S.C. Title 13;

(e) To a recipient who has provided NACIC with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or designee to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of that agency or instrumentality has made a written request to NACIC specifying the particular information desired and the law enforcement activity for which the record is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office; or

(k) To any agency, government instrumentality, or other person or entity pursuant to the order of a court of competent jurisdiction of the United States or constituent states.

§ 1801.52 Criminal penalties.

(a) *Unauthorized disclosure.* Criminal penalties may be imposed against any officer or employee of NACIC who, by virtue of employment, has possession of or access to NACIC records which contain information identifiable with an individual, the disclosure of which is prohibited by the Privacy Act or by these rules, and who, knowing that disclosure of the specific material is so

prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive same.

(b) *Unauthorized maintenance.* Criminal penalties may be imposed against any officer or employee of NACIC who willfully maintains a system of records without meeting the requirements of section (e)(4) of the Privacy Act, 5 U.S.C. 552a. The Coordinator and the Director of NACIC are authorized independently to conduct such surveys and inspect such records as necessary from time to time to ensure that these requirements are met.

(c) *Unauthorized requests.* Criminal penalties may be imposed upon any person who knowingly and willfully requests or obtains any record concerning an individual from NACIC under false pretenses.

Subpart G—Exemptions

§ 1801.63 Specific exemptions.

Pursuant to authority granted in section (k) of the Privacy Act, the Director, NACIC has determined to exempt from section (d) of the Privacy Act those portions and only those portions of all systems of records maintained by NACIC that would consist of, pertain to, or otherwise reveal information that is:

(a) Classified pursuant to Executive Order 12958 (or successor or prior Order) and thus subject to the provisions of 5 U.S.C. 552(b)(1) and 5 U.S.C. 552a(k)(1);

(b) Investigatory in nature and compiled for law enforcement purposes, other than material within the scope of section (j)(2) of the Act; provided however, that if an individual is denied any right, privilege, or benefit to which they are otherwise eligible, as a result of the maintenance of such material, then such material shall be provided to that individual except to the extent that the disclosure would reveal the identity of a source who furnished the information to the United States Government under an express promise of confidentiality, or, prior to the effective date of this section, under an implied promise of confidentiality;

(c) Maintained in connection with providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056;

(d) Required by statute to be maintained and used solely as statistical records;

(e) Investigatory in nature and compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the United States Government under an express promise of confidentiality, or, prior to the effective date of this section, under an implied promise of confidentiality;

(f) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(g) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the United States Government under an express promise of confidentiality, or, prior to the effective date of this section, under an implied promise of confidentiality.

PART 1802—CHALLENGES TO CLASSIFICATION OF DOCUMENTS BY AUTHORIZED HOLDERS PURSUANT TO SECTION 1.9 OF EXECUTIVE ORDER 12958

Subpart A—General

Sec.
1802.1 Authority and purpose.
1802.2 Definitions.
1802.3 Contact for general information and requests.
1802.4 Suggestions and complaints.

Subpart B—Filing of Challenges

1802.11 Prerequisites.
1802.12 Requirements as to form.
1802.13 Identification of material at issue.
1802.14 Transmission.

Subpart C—Action on Challenges

1802.21 Receipt, recording, and tasking.
1802.22 Challenges barred by res judicata.
1802.23 Determination by originator(s) and/or any interested party.
1802.24 Designation of authority to hear challenges.
1802.25 Action on challenge.
1802.26 Notification of decision and prohibition on adverse action.

Subpart D—Right of Appeal

1802.31 Right of Appeal.

AUTHORITY: Executive Order 12958, 60 FR 19825, 3 CFR 1996 Comp., p. 333–356 (or successor Orders).

SOURCE: 64 FR 49889, Sept. 14, 1999, unless otherwise noted.

Subpart A—General

§ 1802.1 Authority and purpose.

(a) *Authority*. This part is issued under the authority of and in order to implement §1.9 of Executive Order (E.O.) 12958 and section 102 of the National Security Act of 1947.

(b) *Purpose*. This part prescribes procedures for authorized holders of information classified under the various provisions of E.O. 12958, or predecessor Orders, to seek a review or otherwise challenge the classified status of information to further the interests of the United States Government. This part and §1.9 of E.O. 12958 confer no rights upon members of the general public, or authorized holders acting in their personal capacity, both of whom shall continue to request reviews of classification under the mandatory declassification review provisions set forth at §3.6 of E.O. 12958.

§ 1802.2 Definitions.

For purposes of this part, the following terms have the meanings as indicated:

NACIC means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator;

Authorized holders means any member of any United States executive department, military department, the Congress, or the judiciary (Article III) who holds a security clearance from or has been specifically authorized by NACIC to possess and use on official business classified information, or otherwise has Constitutional authority pursuant to their office;

Days means calendar days when NACIC is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any requirement of this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

Challenge means a request in the individual's official, not personal, capacity and in furtherance of the interests of the United States;

Control means ownership or the authority of NACIC pursuant to federal statute or privilege to regulate official or public access to records;

Coordinator means the NACIC Information and Privacy Coordinator acting in the capacity of the Director of NACIC;

Information means any knowledge that can be communicated or documentary material, regardless of its physical form, that is:

(1) Owned by, produced by or for, or under the control of the United States Government, and

(2) Lawfully and actually in the possession of an authorized holder and for which ownership and control has not been relinquished by NACIC;

Interested party means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of NACIC, has a subject matter or physical interest in the documents or information at issue;

Originator means the NACIC officer who originated the information at issue, or successor in office, or a NACIC officer who has been delegated declassification authority for the information at issue in accordance with the provisions of this Order;

This Order means Executive Order 12958 of April 17, 1995, or successor Orders.

§ 1802.3 Contact for general information and requests.

For information on this part or to file a challenge under this part, please direct your inquiry to the Director, National Counterintelligence Center,

Washington, DC 20505. The commercial (non-secure) telephone is (703) 874–4117; the classified (secure) telephone for voice and facsimile is (703) 874–5829.

§ 1802.4 Suggestions and complaints.

NACIC welcomes suggestions or complaints with regard to its administration of the Executive Order. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. NACIC will respond to all substantive communications and take such actions as determined feasible and appropriate.

Subpart B—Filing Of Challenges

§ 1802.11 Prerequisites.

Prior to reliance on this part, authorized holders are required to first exhaust such established administrative procedures for the review of classified information. Further information on these procedures is available from the point of contact, § 1802.3.

§ 1802.12 Requirements as to form.

The challenge shall include identification of the challenger by full name and title of position, verification of security clearance or other basis of authority, and an identification of the documents or portions of documents or information at issue. The challenge shall also, in detailed and factual terms, identify and describe the reasons why it is believed that the information is not protected by one or more of the § 1.5 provisions, that the release of the information would not cause damage to the national security, or that the information should be declassified due to the passage of time. The challenge must be properly classified; in this regard, until the challenge is decided, the authorized holder must treat the challenge, the information being challenged, and any related or explanatory information as classified at the same level as the current classification of the information in dispute.

§ 1802.13 Identification of material at issue.

Authorized holders shall append the documents at issue and clearly mark those portions subject to the challenge. If information not in documentary form is in issue, the challenge shall state so clearly and present or otherwise refer with specificity to that information in the body of the challenge.

§ 1802.14 Transmission.

Authorized holders must direct challenge requests to NACIC as specified in § 1802.3. The classified nature of the challenge, as well as the appended documents, require that the holder transmit same in full accordance with established security procedures. In general, registered U.S. mail is approved for SECRET, non-compartmented material; higher classifications require use of approved Top Secret facsimile machines or NACIC-approved couriers. Further information is available from NACIC as well as corporate or other federal agency security departments.

Subpart C—Action On Challenges

§ 1802.21 Receipt, recording, and tasking.

The Coordinator shall within ten (10) days record each challenge received under this part, acknowledge receipt to the authorized holder, and task the originator and other interested parties. Additional taskings, as required during the review process, shall be accomplished within five (5) days of notification.

§ 1802.22 Challenges barred by res judicata.

The Coordinator shall respond on behalf of the Director, NACIC and deny any challenge where the information in question has been the subject of a classification review within the previous two (2) years or is the subject of pending litigation in the federal courts.

§ 1802.23 Response by originator(s) and/or any interested party.

(a) *In general.* The originator of the classified information (document) is a required party to any challenge; other interested parties may become involved through the request of the Director, NACIC or the originator when it is determined that some or all of the information is also within their official cognizance.

(b) *Determination.* These parties shall respond in writing to the Director,

NACIC with a mandatory unclassified finding, to the greatest extent possible, and an optional classified addendum. This finding shall agree to a declassification or, in specific and factual terms, explain the basis for continued classification including identification of the category of information, the harm to national security which could be expected to result from disclosure, and, if older than ten (10) years, the basis for the extension of classification time under §§1.6 and 3.4 of this Order. These parties shall also provide a statement as to whether or not there is any other statutory, common law, or Constitutional basis for withholding as required by §6.1(c) of this Order.

(c) *Time.* The determination(s) shall be provided on a first in, first out basis with respect to all challenges pending under this section and shall be accomplished expeditiously taking into account the requirements of the authorized holder as well as the business requirements of the originator including their responsibilities under the Freedom of Information Act, the Privacy Act, or the mandatory declassification review provisions of this Order.

§1802.24 Designation of authority to hear challenges.

The Director, NACIC is the NACIC authority to hear and decide challenges under this part.

§1802.25 Action on challenge.

Action by Coordinator. The Coordinator shall provide a summation memorandum for consideration of the Director, NACIC; the complete package consisting of the challenge, the information at issue, and the findings of the originator and interested parties shall also be provided. The Director, NACIC shall personally decide each case; no personal appearances shall be permitted without the express permission of the Director, NACIC.

§1802.26 Notification of decision and prohibition on adverse action.

The Coordinator shall communicate the decision of NACIC to the authorized holder, the originator, and other interested parties within ten (10) days of the decision by the Coordinator. That correspondence shall include a notice that no adverse action or retribution can be taken in regard to the challenge and that an appeal of the decision may be made to the Interagency Security Classification Appeals Panel (ISCAP) established pursuant to §5.4 of this Order.

Subpart D—Right of Appeal

§1802.31 Right of appeal.

A right of appeal is available to the ISCAP established pursuant to §5.4 of this Order. Action by that body will be the subject of rules to be promulgated by the Information Security Oversight Office (ISOO).

PART 1803—PUBLIC REQUESTS FOR MANDATORY DECLASSIFICATION REVIEW OF CLASSIFIED INFORMATION PURSUANT TO SECTION 3.6 OF EXECUTIVE ORDER 12958

Subpart A—General

Sec.
1803.1 Authority and purpose.
1803.2 Definitions.
1803.3 Contact for general information and requests.
1803.4 Suggestions and complaints.

Subpart B—Filing of Mandatory Declassification Review (MDR) Requests

1803.11 Preliminary information.
1803.12 Requirements as to form.
1803.13 Fees.

Subpart C—NACIC Action on MDR Requests

1803.21 Receipt, recording, and tasking.
1803.22 Requests barred by res judicata.
1803.23 Determination by originator or interested party.
1803.24 Notification of decision and right of appeal.

Subpart D—NACIC Action on MDR Appeals

1803.31 Requirements as to time and form.
1803.32 Receipt, recording, and tasking.
1803.33 Determination by NACIC Office Chiefs.
1803.34 Appeal authority.
1803.35 Action by appeals authority.
1803.36 Notification of decision and right of further appeal.

Subpart E—Further Appeals

1803.41 Right of further appeal.

AUTHORITY: Section 3.6 of Executive Order 12958 (or successor Orders) and Section 102 of the National Security Act, as amended (50 U.S.C. 403).

SOURCE: 64 FR 49890, Sept. 14, 1999, unless otherwise noted.

Subpart A—General

§ 1803.1 Authority and purpose.

(a) *Authority*. This part is issued under the authority of and in order to implement § 3.6 of Executive Order (E.O.) 12958 (or successor Orders); and Section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403).

(b) *Purpose*. This part prescribes procedures, subject to limitations set forth below, for members of the public to request a declassification review of information classified under the various provisions of this or predecessor Orders. Section 3.6 of E.O. 12958 and these regulations do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or employees.

§ 1803.2 Definitions.

For purposes of this part, the following terms have the meanings as indicated:

NACIC means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator;

Days means calendar days when NACIC is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any requirement of this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

Control means ownership or the authority of NACIC pursuant to federal statute or privilege to regulate official or public access to records;

Coordinator means the NACIC Information and Privacy Coordinator who serves as the NACIC manager of the information review and release program instituted under the mandatory declassification review provisions of Executive Order 12958;

Federal agency means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

Information means any knowledge that can be communicated or documentary material, regardless of its physical form that is owned by, produced by or for, or under the control of the United States Government; it does not include information originated by the incumbent President, White House Staff, appointed committees, commissions or boards, or any entities within the Executive Office that solely advise and assist the incumbent President;

Interested party means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of NACIC, has a subject matter or physical interest in the documents or information at issue;

NARA means the National Archives and Records Administration;

Originator means the NACIC officer who originated the information at issue, or successor in office, or a NACIC officer who has been delegated declassification authority for the information at issue in accordance with the provisions of this Order;

Presidential libraries means the libraries or collection authorities established by statute to house the papers of former Presidents Hoover, Roosevelt, Truman, Eisenhower, Kennedy, Johnson, Nixon, Ford, Carter, Reagan, Bush and similar institutions or authorities as may be established in the future;

Referral means coordination with or transfer of action to an interested party;

This Order means Executive Order 12958 of April 17, 1995 or successor Orders;

§ 1803.3 Contact for general information and requests.

For general information on this part or to request a declassification review, please direct your communication to the Information and Privacy Coordinator, National Counterintelligence Center, 3W01 NHB, Washington, DC 20505. Such inquiries will also be accepted by facsimile at (703) 874–5844.

For general or status information only, the telephone number is (703) 874–4121. Collect calls cannot be accepted.

§ 1803.4 Suggestions and complaints.

NACIC welcomes suggestions or complaints with regard to its administration of the mandatory declassification review program established under Executive Order 12958. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. NACIC will respond to all substantive communications and take such actions as determined feasible and appropriate.

Subpart B—Filing of Mandatory Declassification Review (MDR) Requests

§ 1803.11 Preliminary information.

Members of the public shall address all communications to the point of contact specified above and clearly delineate the communication as a request under this part. Requests and appeals on requests received from members of the public who owe outstanding fees for information services under this Order or the Freedom of Information Act at this or another federal agency will not be accepted until such debts are resolved.

§ 1803.12 Requirements as to form.

The request shall identify the document(s) or material(s) with sufficient specificity (e.g., National Archives and Records Administration (NARA) Document Accession Number or other applicable, unique document identifying number) to enable NACIC to locate it with reasonable effort. Broad or topical requests for records on a particular subject may not be accepted under this provision. A request for documents contained in the various Presidential libraries shall be effected through the staff of such institutions who shall forward the document(s) in question for NACIC review. The requester shall also provide sufficient personal identifying information when required by NACIC to satisfy requirements of this part.

§ 1803.13 Fees.

Requests submitted via NARA or the various Presidential libraries shall be responsible for reproduction costs required by statute or regulation. Requests made directly to NACIC will be liable for costs in the same amount and under the same conditions as specified in part 1800 of this chapter.

Subpart C—NACIC Action on MDR Requests

§ 1803.21 Receipt, recording, and tasking.

The Information and Privacy Coordinator shall within ten (10) days record each mandatory declassification review request received under this part, acknowledge receipt to the requester in writing (if received directly from a requester), and shall thereafter task the originator and other interested parties. Additional taskings, as required during the review process, shall be accomplished within ten (10) days of notification.

§ 1803.22 Requests barred by res judicata.

The Coordinator shall respond to the requester and deny any request where the information in question has been the subject of a classification review within the previous two (2) years or is the subject of pending litigation in the federal courts.

§ 1803.23 Determination by originator or interested party.

(a) *In general*. The originator of the classified information (document) is a required party to any mandatory declassification review request; other interested parties may become involved through a referral by the Coordinator when it is determined that some or all of the information is also within their official cognizance.

(b) *Required determinations*. These parties shall respond in writing to the Coordinator with a finding as to the classified status of the information including the category of protected information as set forth in §1.5 of this Order, and, if older than ten (10) years, the basis for the extension of classification time under §§1.6 and 3.4 of this Order.

These parties shall also provide a statement as to whether or not there is any other statutory, common law, or Constitutional basis for withholding as required by § 6.1(c) of this Order.

(c) *Time*. This response shall be provided expeditiously on a first-in, first-out basis taking into account the business requirements of the originator or interested parties and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act.

§ 1803.24 Notification of decision and right of appeal.

The Coordinator shall communicate the decision of NACIC to the requester within ten (10) days of completion of all review action. That correspondence shall include a notice of a right of administrative appeal to the Director, NACIC pursuant to § 3.6(d) of this Order.

Subpart D—NACIC Action on MDR Appeals

§ 1803.31 Requirements as to time and form.

Appeals of decisions must be received by the Coordinator within forty-five (45) days of the date of mailing of NACIC's initial decision. It shall identify with specificity the documents or information to be considered on appeal and it may, but need not, provide a factual or legal basis for the appeal.

§ 1803.32 Receipt, recording, and tasking.

The Coordinator shall promptly record each appeal received under this part, acknowledge receipt to the requester, and task the originator and other interested parties. Additional taskings, as required during the review process, shall be accomplished within ten (10) days of notification.

§ 1803.33 Determination by NACIC Office Chiefs.

Each NACIC Office Chief in charge of an office which originated or has an interest in any of the records subject to the appeal, or designee, is a required party to any appeal; other interested parties may become involved through the request of the Coordinator when it is determined that some or all of the information is also within their official cognizance. These parties shall respond in writing to the Coordinator with a finding as to the classified status of the information including the category of protected information as set forth in § 1.5 of this Order, and, if older than ten (10) years, the basis for continued classification under §§ 1.6 and 3.4 of this Order. These parties shall also provide a statement as to whether or not there is any other statutory, common law, or Constitutional basis for withholding as required by § 6.1(c) of this Order. This response shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the parties and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act.

§ 1803.34 Appeal authority.

The Director, NACIC will make final NACIC decisions from appeals of initial denial decisions under E.O. 12958. Matters decided by the Director, NACIC will be deemed a final decision by NACIC.

§ 1803.35 Action by appeals authority.

Action by the Director, NACIC. The Coordinator shall provide a summation memorandum for consideration of the Director, NACIC; the complete record of the request consisting of the request, the document(s) (sanitized and full text) at issue, and the findings of the originator and interested parties. The Director, NACIC shall personally decide each case; no personal appearances shall be permitted without the express permission of the Director, NACIC.

§ 1803.36 Notification of decision and right of further appeal.

The Coordinator shall communicate the decision of the Director, NACIC to the requester, NARA, or the particular Presidential Library within ten (10) days of such decision. That correspondence shall include a notice that an appeal of the decision may be made to the Interagency Security Classification

Appeals Panel (ISCAP) established pursuant to § 5.4 of this Order.

Subpart E—Further Appeals

§ 1803.41 Right of further appeal.

A right of further appeal is available to the ISCAP established pursuant to § 5.4 of this Order. Action by that Panel will be the subject of rules to be promulgated by the Information Security Oversight Office (ISOO).

PART 1804—ACCESS BY HISTORICAL RESEARCHERS AND FORMER PRESIDENTIAL APPOINTEES PURSUANT TO SECTION 4.5 OF EXECUTIVE ORDER 12958

Subpart A—General

Sec.
1804.01 Authority and purpose.
1804.02 Definitions.
1804.03 Contact for general information and requests.
1804.04 Suggestions and complaints.

Subpart B—Requests for Historical Access

1804.11 Requirements as to who may apply.
1804.12 Designations of authority to hear requests.
1804.13 Receipt, recording, and tasking.
1804.14 Determinations by tasked officials.
1804.15 Action by hearing authority.
1804.16 Action by appeal authority.
1804.17 Notification of decision.
1804.18 Termination of access.

AUTHORITY: Section 4.5 of Executive Order 12958 (or successor Orders) and Presidential Decision Directive/NSC 24 "U.S. Counterintelligence Effectiveness," dated May 3, 1994.

SOURCE: 64 FR 49892, Sept. 14, 1999, unless otherwise noted.

Subpart A—General

§ 1804.1 Authority and purpose.

(a) *Authority*. This part is issued under the authority of and in order to implement § 4.5 of Executive Order 12958 (or successor Orders); and Presidential Decision Directive/NSC 24, U.S. Counterintelligence Effectiveness, dated May 3, 1994.

(b) *Purpose*. (1) This part prescribes procedures for:

(i) Requesting access to NACIC records for purposes of historical research, or

(ii) Requesting access to NACIC records as a former Presidential appointee.

(2) Section 4.5 of Executive Order 12958 and this part do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or employees.

§ 1804.2 Definitions.

For purposes of this part, the following terms have the meanings indicated:

NACIC means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator;

Days means calendar days when NACIC is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any requirement of this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

Control means ownership or the authority of NACIC pursuant to federal statute or privilege to regulate official or public access to records;

Coordinator means the NACIC Information and Privacy Coordinator who serves as the NACIC manager of the historical access program established pursuant to Section 4.5 of this Order;

Federal agency means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

Former Presidential appointee means any person who has previously occupied a policy-making position in the executive branch of the United States Government to which they were appointed by the current or former President and confirmed by the United States Senate;

Historian or historical researcher means any individual with professional training in the academic field of history (or related fields such as journalism) engaged in a research project leading to publication (or any similar

activity such as academic course development) reasonably intended to increase the understanding of the American public into the operations and activities of the United States government;

Information means any knowledge that can be communicated or documentary material, regardless of its physical form that is owned by, produced by or for, or is under the control of the United States Government;

Interested party means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of NACIC, has a subject matter or physical interest in the documents or information at issue;

Originator means the NACIC officer who originated the information at issue, or successor in office, or a NACIC officer who has been delegated declassification authority for the information at issue in accordance with the provisions of this Order;

This Order means Executive Order 12958 of April 17, 1995 or successor Orders.

§ 1804.3 Contact for general information and requests.

For general information on this part, to inquire about historical access to NACIC records, or to make a formal request for such access, please direct your communication in writing to the Information and Privacy Coordinator, Executive Secretariat, 3W01 NHB, National Counterintelligence Center, Washington, DC 20505. Inquiries will also be accepted by facsimile at (703) 874–5844. For general information only, the telephone number is (703) 874–4121. Collect calls cannot be accepted.

§ 1804.4 Suggestions and complaints.

NACIC welcomes suggestions or complaints with regard to its administration of the historical access program established pursuant to Executive Order 12958. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. NACIC will respond to all substantive communications and take such actions as determined feasible and appropriate.

Subpart B—Requests for Historical Access

§ 1804.11 Requirements as to who may apply.

(a) *Historical researchers:*—(1) *In general.* Any historian engaged in a historical research project as defined above may submit a request in writing to the Coordinator to be given access to classified information for purposes of that research. Any such request shall indicate the nature, purpose, and scope of the research project.

(2) *Additional considerations.* In light of the very limited resources for NACIC's various historical programs, it is the policy of NACIC to consider applications for historical research privileges only in those instances where the researcher's needs cannot be satisfied through requests for access to reasonably described records under the Freedom of Information Act or the mandatory declassification review provisions of Executive Order 12958 and where issues of internal resource availability and fairness to all members of the historical research community militate in favor of a particular grant.

(b) *Former Presidential appointees.* Any former Presidential appointee as defined herein may also submit a request to be given access to any classified records which they originated, reviewed, signed, or received while serving in that capacity. Such appointees may also request approval for a research associate but there is no entitlement to such enlargement of access and the decision in this regard shall be in the sole discretion of NACIC. Requests from appointees shall be in writing to the Coordinator and shall identify the records of interest.

§ 1804.12 Designations of authority to hear requests.

The Director, NACIC has designated the Coordinator, as the NACIC authority to decide requests for historical and former Presidential appointee access under Executive Order 12958 (or successor Orders) and this part.

§ 1804.13 Receipt, recording, and tasking.

The Information and Privacy Coordinator shall within ten (10) days record

each request for historical access received under this part, acknowledge receipt to the requester in writing and take the following action:

(a) *Compliance with general requirements*. The Coordinator shall review each request under this part and determine whether it meets the general requirements as set forth in § 1804.11; if it does not, the Coordinator shall so notify the requester and explain the legal basis for this decision.

(b) *Action on requests meeting general requirements*. For requests which meet the requirements of § 1804.11, the Coordinator shall thereafter task the originator(s) of the materials for which access is sought and other interested parties. Additional taskings, as required during the review process, shall be accomplished within ten (10) days of notification.

§ 1804.14 Determinations by tasked officials.

(a) *Required determinations*. The tasked parties as specified below shall respond in writing to the Coordinator with recommended findings to the following issues:

(1)That a serious professional or scholarly research project by the requester is contemplated;

(2) That such access is clearly consistent with the interests of national security (by originator and interested party, if any);

(3) That a non-disclosure agreement has been or will be executed by the requester (or research associate, if any) and other appropriate steps have been taken to assure that classified information will not be disclosed or otherwise compromised;

(4) That a pre-publication agreement has been or will be executed by the requester (or research associate, if any) which provides for a review of notes and any resulting manuscript by the Deputy Director of NACIC;

(5) That the information requested is reasonably accessible and can be located and compiled with a reasonable effort (by the Deputy Director of NACIC and the originator);

(6) That it is reasonably expected that substantial and substantive government documents and/or information will be amenable to declassification and release and/or publication (by the Deputy Director of NACIC and the originator);

(7) That sufficient resources are available for the administrative support of the researcher given current mission requirements (by the Deputy Director of NACIC and the originator); and,

(8) That the request cannot be satisfied to the same extent through requests for access to reasonably described records under the Freedom of Information Act or the mandatory declassification review provisions of Executive Order 12958 (by the Coordinator, the Deputy Director of NACIC and the originator).

(b) *Time*. These responses shall be provided expeditiously on a first-in, first-out basis taking into account the business requirements of the tasked offices and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act. NACIC will utilize its best efforts to complete action on requests under this part within thirty (30) days of date of receipt.

§ 1804.15 Action by hearing authority.

Action by Coordinator. The Coordinator shall provide a summation memorandum for consideration of the Director, NACIC, the complete record of the request consisting of the request and the findings of the tasked parties. The Director, NACIC shall decide requests on the basis of the eight factors enumerated at § 1804.14(a). The Director, NACIC shall personally decide each case; no personal appearances shall be permitted without the express permission of the Director, NACIC.

§ 1804.16 Action by appeal authority.

The record compiled (the request, the memoranda filed by the originator and interested parties, and the previous decision(s)) as well as any memorandum of law or policy the referent desires to be considered, shall be certified by the Coordinator and shall constitute the official record of the proceedings and must be included in any subsequent filings. In such cases, the factors to be determined as specified in § 1804.14(a) will be considered by the Director,

NACIC de novo and that decision shall be final.

§ 1804.17 Notification of decision.

The Coordinator shall inform the requester of the decision of the Director, NACIC within ten (10) days of the decision and, if favorable, shall manage the access for such period as deemed required but in no event for more than two (2) years unless renewed by the Director, NACIC in accordance with the requirements of § 1804.14(a).

§ 1804.18 Termination of access.

The Coordinator shall cancel any authorization whenever the security clearance of a requester (or research associate, if any) has been canceled or whenever the Director, NACIC determines that continued access would not be in compliance with one or more of the requirements of § 1804.14(a).

PART 1805—PRODUCTION OF OFFICIAL RECORDS OR DISCLOSURE OF OFFICIAL INFORMATION IN PROCEEDINGS BEFORE FEDERAL, STATE OR LOCAL GOVERNMENT ENTITIES OF COMPETENT JURISDICTION

Sec.
1805.1 Scope and purpose.
1805.2 Definitions.
1805.3 General.
1805.4 Procedures for production.

AUTHORITY: 5 U.S.C. 104; Presidential Decision Directive/NSC 24 "U.S. Counterintelligence Effectiveness, dated May 3, 1994; 50 U.S.C. 403g; United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951); E.O. 12333; E.O. 12356; U.S. v. Snepp 444 U.S. 507 (1980).

SOURCE: 64 FR 49894, Sept. 14, 1999, unless otherwise noted.

§ 1805.1 Scope and purpose.

This part sets forth the policy and procedures with respect to the production or disclosure of:

(a) Material contained in the files of NACIC,

(b) Information relating to or based upon material contained in the files of NACIC,

(c) Information acquired by any person while such person is an employee of NACIC as part of the performance of that person's official duties or because of that person's association with NACIC.

§ 1805.2 Definitions.

For the purpose of this part:

NACIC means the National Counterintelligence Center and includes all staff elements of the NACIC.

Demand means any subpoena, order or other legal summons (except garnishment orders) that is issued by a federal, state or local government entity of competent jurisdiction with the authority to require a response on a particular matter, or a request for appearance of an individual where a demand could issue.

Employee means any officer, any staff, contract or other employee of NACIC, any person including independent contractors associated with or acting on behalf of NACIC; and any person formerly having such relationships with NACIC.

Production or produce means the disclosure of:

(1) Any material contained in the files of NACIC; or

(2) Any information relating to material contained in the files of NACIC, including but not limited to summaries of such information or material, or opinions based on such information or material; or

(3) Any information acquired by persons while such persons were employees of NACIC as a part of the performance of their official duties or because of their official status or association with NACIC; in response to a demand upon an employee of NACIC.

NACIC Counsel is the NACIC employee designated to manage legal matters and regulatory compliance.

§ 1805.3 General.

(a) No employee shall produce any materials or information in response to a demand without prior authorization as set forth in this part. This part also applies to former employees to the extent consistent with applicable nondisclosure agreements.

(b) This part is intended only to provide procedures for responding to demands for production of documents or information, and is not intended to, does not, and may not be relied upon

to, create any right or benefit, substantive or procedural, enforceable by any party against the United States.

§ 1805.4 Procedure for production.

(a) Whenever a demand for production is made upon an employee, the employee shall immediately notify NACIC Counsel, who will follow the procedures set forth in this section.

(b) NACIC Counsel and the Office Chiefs with responsibility for the information sought in the demand shall determine whether any information or materials may properly be produced in response to the demand, except that NACIC Counsel may assert any and all legal defenses and objections to the demand available to NACIC prior to the start of any search for information responsive to the demand. NACIC may, in its sole discretion, decline to begin any search for information responsive to the demand until a final and non-appealable disposition of any such defenses and objections raised by NACIC has been made by the entity or person that issued the demand.

(c) NACIC officials shall consider the following factors, among others, in reaching a decision:

(1) Whether production is appropriate in light of any relevant privilege;

(2) Whether production is appropriate under the applicable rules of discovery or the procedures governing the case or matter in which the demand arose; and

(3) Whether any of the following circumstances apply:

(i) Disclosure would violate a statute, including but not limited to the Privacy Act of 1974, as amended, 5 U.S.C. 552a;

(ii) Disclosure would reveal classified information;

(iii) Disclosure would improperly reveal trade secrets or proprietary confidential information without the owner's consent; or

(iv) Disclosure would interfere with the orderly conduct of NACIC's functions.

(d) If oral or written testimony is sought by a demand in a case or matter in which the NACIC is not a party, a reasonably detailed description of the testimony sought, in the form of an affidavit or, if that is not feasible, a written statement, by the party seeking the testimony or by the party's attorney must be furnished to the NACIC Counsel.

(e) The NACIC Counsel shall be responsible for notifying the appropriate employees and other persons of all decisions regarding responses to demands and providing advice and counsel as to the implementation of such decisions.

(f) If response to a demand is required before a decision is made whether to provide the documents or information sought by the demand, NACIC Counsel, after consultation with the Department of Justice, shall appear before and furnish the court or other competent authority with a copy of this part and state that the demand has been or is being, as the case may be, referred for the prompt consideration of the appropriate NACIC officials, and shall respectfully request the court or other authority to stay the demand pending receipt of the required instructions.

(g) If the court or any other authority declines to stay the demand pending receipt of instructions in response to a request made in accordance with § 1805.4(g) or rules that the demand must be complied with regardless of instructions rendered in accordance with this part not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall, if so directed by NACIC Counsel, respectfully decline to comply with the demand under the authority of *United States ex. rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951), and this part.

(h) With respect to any function granted to NACIC officials in this part, such officials are authorized to delegate in writing their authority in any case or matter or category thereof to subordinate officials.

(i) Any non-employee who receives a demand for the production or disclosure of NACIC information acquired because of that person's association or contacts with NACIC should notify NACIC Counsel, (703) 874–4121, for guidance and assistance. In such cases, the provisions of this part shall be applicable.

PART 1806—PROCEDURES GOVERNING ACCEPTANCE OF SERVICE OF PROCESS

Sec.
1806.1 Scope and Purpose.
1806.2 Definitions.
1806.3 Procedures governing acceptance of service of process.
1806.4 Notification to NACIC Counsel.
1806.5 Authority of NACIC Counsel.

AUTHORITY: 5 U.S.C. 104; Presidential Decision Directive/NSC 24 "U.S. Counterintelligence Effectiveness", dated May 3, 1994; 50 U.S.C. 403g; E.O. 12333.

SOURCE: 64 FR 49895, Sept. 14, 1999, unless otherwise noted.

§ 1806.1 Scope and purpose.

(a) This part sets forth the authority of NACIC personnel to accept service of process on behalf of the NACIC or any NACIC employee.

(b) This part is intended to ensure the orderly execution of the NACIC's affairs and not to impede any legal proceeding.

(c) NACIC regulations concerning employee responses to demands for production of official information before federal, state or local government entities are set out in part 1805 of this chapter.

§ 1806.2 Definitions.

NACIC means the National Counterintelligence Center and include all staff elements of NACIC.

Process means a summons complaint, subpoena, or other official paper (except garnishment orders) issued in conjunction with a proceeding or hearing being conducted by a federal, state, or local government entity of competent jurisdiction.

Employee means any NACIC officer, any staff, contract, or other employee of NACIC, any person including independent contractors associated with or acting for or on behalf of NACIC, and any person formerly having such a relationship with NACIC.

NACIC Counsel refers to the NACIC employee designated by NACIC to manage legal issues and regulatory compliance.

§ 1806.3 Procedures governing acceptance of service of process.

(a) *Service of Process Upon the NACIC or a NACIC Employee in an Official Capacity*—(1) *Personal Service*. Unless otherwise expressly authorized by NACIC Counsel, or designee, personal service of process may be accepted only by NACIC Counsel, Director, NACIC, or Deputy Director, NACIC, located at Central Intelligence Agency Headquarters, Langley, Virginia.

(2) *Mail Service*. Where service of process by registered or certified mail is authorized by law, unless expressly directed otherwise by the NACIC Counsel or designee, personal service of process may be accepted only by NACIC Counsel, Director, NACIC, or Deputy Director, NACIC. Process by mail should be addressed as follows: NACIC Counsel, National Counterintelligence Center, Washington, DC 20505.

(b) *Service of Process Upon a NACIC Employee Solely in An Individual Capacity*—(1) *General*. NACIC will not provide the name or address of any current or former NACIC employee to individuals or entities seeking to serve process upon such employee solely in his or her individual capacity, even when the matter is related to NACIC activities.

(2) *Personal Service*. Subject to the sole discretion of appropriate officials of the CIA, where NACIC is physically located, process servers generally will not be allowed to enter CIA Headquarters for the purpose of serving process upon any NACIC employee solely in his or her individual capacity. Subject to the sole discretion of the Director, NACIC, process servers will generally not be permitted to enter NACIC office space for the purpose of serving process upon a NACIC employee solely in his or her individual capacity. The NACIC Counsel, the Director, NACIC, and the Deputy Director, NACIC are not permitted to accept service of process on behalf of a NACIC employee in his or her individual capacity.

(3) *Mail Service*. Unless otherwise expressly authorized by the NACIC Counsel, or designee, NACIC personnel are not authorized to accept or forward mailed service of process directed to any NACIC employee in his or her individual capacity. Any such process will

be returned to the sender via appropriate postal channels.

(c) *Service of Process Upon a NACIC Employee in a Combined Official and Individual Capacity*—Unless expressly directed otherwise by the NACIC Counsel, or designee, any process to be served upon a NACIC employee in his or her combined official and individual capacity, in person or by mail, can be accepted only by NACIC Counsel, Director, NACIC, or Deputy Director, NACIC, National Counterintelligence Center, Langley, Virginia.

(d) *Service of Process Upon a NACIC Counsel*. The documents for which service is accepted in official capacity only shall be stamped "Service Accepted in Official Capacity Only." Acceptance of Service of Process shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under the laws or rules applicable to the service of process.

§ 1806.4 Notification to NACIC Counsel.

A NACIC employee who receives or has reason to expect to receive service of process in an individual, official, or combined individual and official capacity, in a matter that may involve or the furnishing of documents and that could reasonably be expected to involve NACIC interests, shall promptly notify the NACIC Counsel. Such notification should be given prior to providing the requestor, personal counsel or any other representative, any NACIC information and prior to the acceptance of service of process.

§ 1806.5 Authority of NACIC Counsel.

Any questions concerning interpretation of this part shall be referred to the NACIC Counsel for resolution

PART 1807—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL COUNTERINTELLIGENCE CENTER

Sec.

1807.101 Purpose.
1807.102 Application.
1807.103 Definitions.
1807.104–1807.110 [Reserved]
1807.111 Notice.
1807.112–1807.129 [Reserved]
1807.130 General prohibitions against discrimination.
1807.131–1807.139 [Reserved]
1807.140 Employment.
1807.141–1807.148 [Reserved]
1807.149 Program accessibility: discrimination prohibited.
1807.150 Program accessibility: existing facilities.
1807.151 Program accessibility: new construction and alterations.
1807.152–1807.159 [Reserved]
1807.160 Communications.
1807.161–1807.169 [Reserved]
1807.170 Compliance procedures.

AUTHORITY: 5 U.S.C. 104, Presidential Decision Directive/NSC 24 U.S. Counterintelligence Effectiveness, dated May 3, 1994, 29 U.S.C. 794.

SOURCE: 64 FR 49896, Sept. 14, 1999, unless otherwise noted.

§ 1807.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1807.102 Application.

This part applies to all programs or activities conducted by the NACIC.

§ 1807.103 Definitions.

For purposes of this part, the following terms means—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the NACIC. For example, auxiliary aids useful for persons with impaired vision include readers, materials in Braille, audio recordings, and other similar services and devices. Auxiliary aids

useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices. The CIA, where NACIC is physically located, may prohibit from any of its facilities any auxiliary aid, or category of auxiliary aid that the Center for CIA Security (CCS) determines creates a security risk or potential security risk. CCS reserves the right to examine any auxiliary aid brought into the NACIC facilities at CIA Headquarters.

Complete complaint means a written statement that contains the complainant's name and address and describes the NACIC's alleged discriminatory action in sufficient detail to inform the NACIC of the nature and date of the alleged violation of section 504. It must be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties must describe or identify (by name, if possible) the alleged victims of discrimination.

Director means the Director of NACIC or an official or employee of the NACIC acting for the Director under a delegation of authority.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances or other real or personal property.

Individual with disabilities means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase—

(1) Physical or mental impairment includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Cardiovascular; Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(2) Major life activities includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(3) Has a record of such an impairment means has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.

(4) Is regarded as having an impairment means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the NACIC as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward the impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the NACIC as having such an impairment.

Qualified individual with disabilities means—

(1) With respect to any NACIC program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with a handicap who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the NACIC can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other NACIC program or activity, an individual with disabilities who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) Qualified individual with a disability as that term is defined for purposes of employment in 29 CFR 1614.203(a)(6), which is made applicable to this part by § 1807.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–002, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by the NACIC and not to federally assisted programs.

§§ 1807.104–1807.110 [Reserved]

§ 1807.111 Notice.

The NACIC shall make available to employees, applicants, participants, beneficiaries, and other interested persons, such information regarding the provisions of this part and its applicability to the programs or activities conducted by the NACIC, and make that information available to them in such manner as the Director finds necessary to apprise those persons of the protections against discrimination assured them by section 504 and the regulations in this part.

§§ 1807.112–1807.129 [Reserved]

§ 1807.130 General prohibitions against discrimination.

(a) No qualified individual with disabilities shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under, any program or activity conducted by the NACIC.

(b)(1) The NACIC, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

(i) Deny a qualified individual with disabilities the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Deny a qualified individual with disabilities an opportunity to obtain the same result, to gain the same benefit, to reach the same level of achievement as that provided to others;

(iii) Provide a qualified individual with disabilities with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless that action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with disabilities the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with disabilities in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The NACIC may not deny a qualified individual with disabilities the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The NACIC may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would:

(i) Subject qualified individuals with disabilities to discrimination on the basis of disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(4) The NACIC may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(i) Exclude individuals with disabilities from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity conducted by the NACIC; or

(ii) Defeat or substantially impair the accomplishment of the objectives

of a program or activity with respect to individuals with disabilities.

(5) The NACIC, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(6) The NACIC may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may the NACIC establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. However, the programs or activities of entities that are licensed or certified by the NACIC are not, themselves, covered by this part.

(c) The exclusion of persons without disabilities from the benefits of a program limited by Federal statute or Executive Order to individuals with disabilities or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive Order to a different class of individuals with disabilities is not prohibited by this part.

(d) The NACIC shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

§§ 1807.131–1807.139 [Reserved]

§ 1807.140 Employment.

No qualified individual with disabilities shall, solely on the basis of disability, be subjected to discrimination in employment under any program or activity conducted by the NACIC. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1979 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1614, shall apply to employment in federally conducted programs or activities.

§§ 1807.141–1807.148 [Reserved]

§ 1807.149 Program accessibility: discrimination prohibited.

Except as otherwise provided in § 1807.150, no qualified individual with disabilities shall, because the NACIC's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the NACIC.

§ 1807.150 Program accessibility: existing facilities.

(a) *General.* The NACIC shall operate each program or activity so that the program or activity, viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This program does not:

(1) Necessarily require the NACIC to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2)(i) Require the NACIC to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

(ii) The NACIC has the burden of proving that compliance with § 1807.150(a) would result in that alteration or those burdens.

(iii) The decision that compliance would result in that alteration of those burdens must be made by the Director after considering all of the NACIC's resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion.

(iv) If an action would result in that alteration or those burdens, the NACIC shall take any other action that would not result in the alteration of burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

(b) *Methods.* (1) The NACIC may comply with the requirements of this section through such means as redesign of equipment, delivery of services at alternate accessible sites, alteration of existing facilities, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities.

(2) The NACIC is not required to make structural changes in existing facilities if other methods are effective in achieving compliance with this section.

(3) In choosing among available methods for meeting the requirements of this section, the NACIC shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

§ 1807.151 Program accessibility: new construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of, the NACIC shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with disabilities in compliance with the definitions, requirements, and standards of the Americans with Disabilities Act Accessibility Guidelines, 36 CFR part 1191.

§§ 1807.152–1807.159 [Reserved]

§ 1807.160 Communications.

(a) The NACIC shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public as follows:

(1)(i) The NACIC shall furnish appropriate auxiliary aids if necessary to afford an individual with disabilities an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the NACIC.

(ii) In determining what type of auxiliary aid is necessary, the NACIC shall give primary consideration to the requests of the individual with disabilities.

(2) Where the NACIC communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The NACIC shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) This section does not require the NACIC to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where NACIC personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the NACIC has the burden of proving that compliance with § 1807.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the NACIC head or his or her designee after considering all NACIC resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the NACIC shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity.

§§ 1807.161–1807.169 [Reserved]

§ 1807.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs and activities conducted by the NACIC.

(b) The NACIC shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Office of Equal Employment Opportunity, is responsible for coordinating implementation of this section. Complaints may be sent to NACIC, Director, Washington, DC 20505.

(d) The NACIC shall accept and investigate all complete complaints for which it has jurisdiction. All complete

complaints must be filed within 180 days of the alleged act of discrimination. The NACIC may extend this time period for good cause.

(e) If the NACIC receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The NACIC shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Americans with Disabilities Act Accessibility Guidelines is not readily accessible to and usable by individuals with disabilities.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, The NACIC shall notify the complainant of the results of the investigation in a letter containing:

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the NACIC of the letter required by paragraph (g) of this section. The NACIC may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Director.

(j) The NACIC shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the NACIC determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Director may delegate the authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

CHAPTER XIX—CENTRAL INTELLIGENCE AGENCY

Part		Page
1900	Public access to CIA records under the Freedom of Information Act (FOIA)	447
1901	Public rights under the Privacy Act of 1974	458
1902	Information security regulations	468
1903	Conduct on Agency installations	469
1904	Procedures governing acceptance of service of process	475
1905	Production of official records or disclosure of official information in proceedings before Federal, State or local governmental entities of competent jurisdiction	476
1906	Enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by the Central Intelligence Agency	478
1907	Challenges to classification of documents by authorized holders pursuant to §1.9 of Executive Order 12958	484
1908	Public requests for mandatory declassification review of classified information pursuant to §3.6 of Executive Order 12958	487
1909	Access by historical researchers and former presidentail appointees pursuant to §4.5 of Executive Order 12958	492
1910	Debarment and suspension procedures	495

PART 1900—PUBLIC ACCESS TO CIA RECORDS UNDER THE FREEDOM OF INFORMATION ACT (FOIA)

GENERAL

Sec.
1900.01 Authority and purpose.
1900.02 Definitions.
1900.03 Contact for general information and requests.
1900.04 Suggestions and complaints.

FILING OF FOIA REQUESTS

1900.11 Preliminary information.
1900.12 Requirements as to form and content.
1900.13 Fees for record services.
1900.14 Fee estimates (pre-request option).

CIA ACTION ON FOIA REQUESTS

1900.21 Processing of requests for records.
1900.22 Action and determination(s) by originator(s) or any interested party.
1900.23 Payment of fees, notification of decision, and right of appeal.

ADDITIONAL ADMINISTRATIVE MATTERS

1900.31 Procedures for business information.
1900.32 Procedures for information concerning other persons.
1900.33 Allocation of resources; agreed extensions of time.
1900.34 Requests for expedited processing.

CIA ACTION ON FOIA ADMINISTRATIVE APPEALS

1900.41 Establishment of appeals structure.
1900.42 Right of appeal and appeal procedures.
1900.43 Determination(s) by Deputy Director(s).
1900.44 Action by appeals authority.
1900.45 Notification of decision and right of judicial review.

AUTHORITY: National Security Act of 1947, as amended; Central Intelligence Agency Act of 1949, as amended; Freedom of Information Act, as amended; CIA Information Act of 1984; and Executive Order 12958 , 60 FR 19825, 3 CFR 1996 Comp., p. 333–356 (or successor Orders).

SOURCE: 62 FR 32481, June 16, 1997, unless otherwise noted.

GENERAL

§ 1900.01 Authority and purpose.

This part is issued under the authority of and in order to implement the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552); the CIA Information Act of 1984 (50 U.S.C. 431); sec. 102 of the National Security Act of 1947, as amended (50 U.S.C. 403); and sec. 6 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403g). It prescribes procedures for:

(a) Requesting information on available CIA records, or the CIA administration of the FOIA, or estimates of fees that may become due as a result of a request;

(b) Requesting records pursuant to the FOIA; and

(c) Filing an administrative appeal of an initial adverse decision under the FOIA.

§ 1900.02 Definitions.

For purposes of this part, the following terms have the meanings indicated:

(a) *Agency* or *CIA* means the United States Central Intelligence Agency acting through the CIA Information and Privacy Coordinator;

(b) *Days* means calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

(c) *Control* means ownership or the authority of the CIA pursuant to federal statute or privilege to regulate official or public access to records;

(d) *Coordinator* means the CIA Information and Privacy Coordinator who serves as the Agency manager of the information review and release program instituted under the Freedom of Information Act;

(e) *Direct costs* means those expenditures which an agency actually incurs in the processing of a FOIA request; it does not include overhead factors such as space; it does include:

(1) *Pages* means paper copies of standard office size or the dollar value equivalent in other media;

(2) *Reproduction* means generation of a copy of a requested record in a form appropriate for release;

(3) *Review* means all time expended in examining a record to determine whether any portion must be withheld pursuant to law and in effecting any

required deletions but excludes personnel hours expended in resolving general legal or policy issues; it also means personnel hours of professional time;

(4) *Search* means all time expended in looking for and retrieving material that may be responsive to a request utilizing available paper and electronic indices and finding aids; it also means personnel hours of professional time or the dollar value equivalent in computer searches;

(f) *Expression of interest* means a written communication submitted by a member of the public requesting information on or concerning the FOIA program and/or the availability of documents from the CIA;

(g) *Federal agency* means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

(h) *Fees* means those direct costs which may be assessed a requester considering the categories established by the FOIA; requesters should submit information to assist the Agency in determining the proper fee category and the Agency may draw reasonable inferences from the identity and activities of the requester in making such determinations; the fee categories include:

(1) *Commercial* means a request in which the disclosure sought is primarily in the commercial interest of the requester and which furthers such commercial, trade, income or profit interests;

(2) *Non-commercial educational or scientific institution* means a request from an accredited United States educational institution at any academic level or institution engaged in research concerning the social, biological, or physical sciences or an instructor or researcher or member of such institutions; it also means that the information will be used in a specific scholarly or analytical work, will contribute to the advancement of public knowledge, and will be disseminated to the general public;

(3) *Representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but agencies may also look to the past publication record of a requestor in making this determination:

(4) *All other* means a request from an individual not within paragraph (h)(1), (2), or (3) of this section;

(i) *Freedom of Information Act* or "FOIA" means the statutes as codified at 5 U.S.C. 552;

(j) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue;

(k) *Originator* means the U.S. Government official who originated the document at issue or successor in office or such official who has been delegated release or declassification authority pursuant to law;

(l) *Potential requester* means a person, organization, or other entity who submits an expression of interest;

(m) *Reasonably described records* means a description of a document (record) by unique identification number or descriptive terms which permit an Agency employee to locate documents with reasonable effort given existing indices and finding aids;

(n) *Records* or *agency records* means all documents, irrespective of physical or electronic form, made or received by the CIA in pursuance of federal law or in connection with the transaction of public business and appropriate for preservation by the CIA as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the CIA or because of the informational value of the data contained therein; it does not include:

(1) *Books, newspapers, magazines, journals, magnetic or printed transcripts of electronic broadcasts, or similar public sector materials* acquired generally and/or maintained for library or reference purposes; to the extent that such materials are incorporated into any form of analysis or otherwise distributed or published by the Agency, they are fully subject to the disclosure provisions of the FOIA;

(2) *Index, filing, or museum documents* made or acquired and preserved solely for reference, indexing, filing, or exhibition purposes; and

(3) *Routing and transmittal sheets and notes and filing or destruction notes* which do not also include information, comment, or statements of substance;

(o) *Responsive records* means those documents (i.e., records) which the Agency has determined to be within the scope of a FOIA request.

62 FR 32481, June 16, 1997, as amended at 72 FR 39316, July 18, 2007]

§ 1900.03 Contact for general information and requests.

For general information on this part, to inquire about the FOIA program at CIA, or to file a FOIA request (or expression of interest), please direct your communication in writing to the Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Such inquiries will also be accepted by facsimile at (703) 613–3007. For general information or status information on pending cases only, the telephone number is (703) 613–1287. Collect calls cannot be accepted.

§ 1900.04 Suggestions and complaints.

The Agency welcomes suggestions or complaints with regard to its administration of the Freedom of Information Act. Many requesters will receive prepaid, customer satisfaction survey cards. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. The Agency will respond to all substantive communications and take such actions as determined feasible and appropriate.

FILING OF FOIA REQUESTS

§ 1900.11 Preliminary Information.

Members of the public shall address all communications to the CIA Coordinator as specified at 32 CFR 1900.03 and clearly delineate the communication as a request under the Freedom of Information Act and this regulation. CIA employees receiving a communication in the nature of a FOIA request shall expeditiously forward same to the Coordinator. Requests and appeals on requests, referrals, or coordinations received from members of the public who owe outstanding fees for information services at this or other federal agencies will not be accepted and action on all pending requests shall be terminated in such circumstances.

§ 1900.12 Requirements as to form and content.

(a) *Required information*. No particular form is required. A request need only reasonably describe the records of interest. This means that documents must be described sufficiently to enable a professional employee familiar with the subject to locate the documents with a reasonable effort. Commonly this equates to a requirement that the documents must be locatable through the indexing of our various systems. Extremely broad or vague requests or requests requiring research do not satisfy this requirement.

(b) *Additional information for fee determination*. In addition, a requester should provide sufficient personal identifying information to allow us to determine the appropriate fee category. A requester should also provide an agreement to pay all applicable fees or fees not to exceed a certain amount or request a fee waiver.

(c) *Otherwise*. Communications which do not meet these requirements will be considered an expression of interest and the Agency will work with, and

offer suggestions to, the potential requester in order to define a request properly.

§ 1900.13 Fees for record services.

(a) *In general.* Search, review, and reproduction fees will be charged in accordance with the provisions below relating to schedule, limitations, and category of requester. Applicable fees will be due even if our search locates no responsive records or some or all of the responsive records must be denied under one or more of the exemptions of the Freedom of Information Act.

(b) *Fee waiver requests.* Records will be furnished without charge or at a reduced rate whenever the Agency determines:

(1) That, as a matter of administrative discretion, the interest of the United States Government would be served, or

(2) That it is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester; the Agency shall consider the following factors when making this determination:

(i) Whether the subject of the request concerns the operations or activities of the United States Government; and, if so,

(ii) Whether the disclosure of the requested documents is likely to contribute to an understanding of United States Government operations or activities; and, if so,

(iii) Whether the disclosure of the requested documents will contribute to public understanding of United States Government operations or activities; and, if so,

(iv) Whether the disclosure of the requested documents is likely to contribute significantly to public understanding of United States Government operations and activities; and

(v) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(vi) Whether the disclosure is primarily in the commercial interest of the requester.

(c) *Fee waiver appeals.* Denials of requests for fee waivers or reductions may be appealed to the Chair of the Agency Release Panel via the Coordinator. A requester is encouraged to provide any explanation or argument as to how his or her request satisfies the statutory requirement set forth above.

(d) *Time for fee waiver requests and appeals.* It is suggested that such requests and appeals be made and resolved prior to the initiation of processing and the incurring of costs. However, fee waiver requests will be accepted at any time prior to the release of documents or the completion of a case, and fee waiver appeals within forty-five (45) days of our initial decision subject to the following condition: If processing has been initiated, then the requester must agree to be responsible for costs in the event of an adverse administrative or judicial decision.

(e) *Agreement to pay fees.* In order to protect requesters from large and/or unanticipated charges, the Agency will request specific commitment when it estimates that fees will exceed $100.00. The Agency will hold in abeyance for forty-five (45) days requests requiring such agreement and will thereafter deem the request closed. This action, of course, would not prevent an individual from refiling his or her FOIA request with a fee commitment at a subsequent date.

(f) *Deposits.* The Agency may require an advance deposit of up to 100 percent of the estimated fees when fees may exceed $250.00 and the requester has no history of payment, or when, for fees of any amount, there is evidence that the requester may not pay the fees which would be accrued by processing the request. The Agency will hold in abeyance for forty-five (45) days those requests where deposits have been requested.

(g) *Schedule of fees*—(1) *In general.* The schedule of fees for services performed in responding to requests for records is established as follows:

Personnel Search and Review

Clerical/Technical	Quarter hour	$5.00
Professional/Supervisory	Quarter hour	10.00
Manager/Senior Professional	Quarter hour	18.00

Computer Search and Production

Search (on-line)	Flat rate	10.00
Search (off-line)	Flat rate	30.00
Other activity	Per minute	10.00
Tapes (mainframe cassette)	Each	9.00
Tapes (mainframe cartridge)	Each	9.00
Tapes (mainframe reel)	Each	20.00
Tapes (PC 9mm)	Each	25.00
Diskette (3.5″)	Each	4.00
CD (bulk recorded)	Each	10.00
CD (recordable)	Each	20.00
Telecommunications	Per minute	.50
Paper (mainframe printer)	Per page	.10
Paper (PC b&w laser printer)	Per page	.10
Paper (PC color printer)	Per page	1.00

Paper Production

Photocopy (standard or legal)	Per page	.10
Microfiche	Per frame	.20
Pre-printed (if available)	Per 100 pages.	5.00
Published (if available)	Per item	NTIS

(2) *Application of schedule*. Personnel search time includes time expended in either manual paper records searches, indices searches, review of computer search results for relevance, personal computer system searches, and various reproduction services. In any event where the actual cost to the Agency of a particular item is less than the above schedule (e.g., a large production run of a document resulted in a cost less than $5.00 per hundred pages), then the actual lesser cost will be charged. Items published and available at the National Technical Information Service (NTIS) are also available from CIA pursuant to this part at the NTIS price as authorized by statute.

(3) *Other services*. For all other types of output, production, or reproduction (e.g., photographs, maps, or published reports), actual cost or amounts authorized by statute. Determinations of actual cost shall include the commercial cost of the media, the personnel time expended in making the item to be released, and an allocated cost of the equipment used in making the item, or, if the production is effected by a commercial service, then that charge shall be deemed the actual cost for purposes of this part.

(h) *Limitations on collection of fees*—(1) *In general*. No fees will be charged if the cost of collecting the fee is equal to or greater than the fee itself. That cost includes the administrative costs to the Agency of billing, receiving, recording, and processing the fee for deposit to the Treasury Department and, as of the date of these regulations, is deemed to be $10.00.

(2) *Requests for personal information*. No fees will be charged for requesters seeking records about themselves under the FOIA; such requests are processed in accordance with both the FOIA and the Privacy Act in order to ensure the maximum disclosure without charge.

(i) *Fee categories*. There are four categories of FOIA requesters for fee purposes: *Commercial use* requesters, *educational and non-commercial scientific institution* requesters, *representatives of the news media* requesters, and *all other* requesters. The categories are defined in § 1900.02, and applicable fees, which are the same in two of the categories, will be assessed as follows:

(1) *Commercial use* requesters: Charges which recover the full direct costs of searching for, reviewing, and duplicating responsive records (if any);

(2) *Educational and non-commercial scientific institution* requesters as well as "*representatives of the news media*" requesters: Only charges for reproduction beyond the first 100 pages;

(3) *All other* requesters: Charges which recover the full direct cost of searching for and reproducing responsive records (if any) beyond the first 100 pages of reproduction and the first two hours of search time which will be furnished without charge.

(j) *Associated requests*. A requester or associated requesters may not file a series of multiple requests, which are merely discrete subdivisions of the information actually sought for the purpose of avoiding or reducing applicable fees. In such instances, the Agency may aggregate the requests and charge the applicable fees.

§ 1900.14 Fee estimates (pre-request option).

In order to avoid unanticipated or potentially large fees, a requester may submit a request for a fee estimate. The Agency will endeavor within ten (10) days to provide an accurate estimate, and, if a request is thereafter submitted, the Agency will not accrue or charge fees in excess of our estimate without the specific permission of the requester. Effective October 2, 1997, the ten (10) day provision is modified to

twenty (20) days pursuant to the Electronic Freedom of Information Act Amendments of 1996.

CIA ACTION ON FOIA REQUESTS

§ 1900.21 Processing of requests for records.

(a) *In general.* Requests meeting the requirements of §§1900.11 through 1900.13 shall be accepted as formal requests and processed under the Freedom of Information Act, 5 U.S.C. 552, and these regulations. Upon receipt, the Agency shall within ten (10) days record each request, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the CIA components reasonably believed to hold responsive records. Effective October 2, 1997, the ten (10) day provision is modified to twenty (20) days pursuant to the Electronic Freedom of Information Act Amendments of 1996.

(b) *Database of "officially released information."* As an alternative to extensive tasking and as an accommodation to many requesters, the Agency maintains a database of "officially released information" which contains copies of documents released by this Agency. Searches of this database, containing currently in excess of 500,000 pages, can be accomplished expeditiously. Moreover, requests that are specific and well-focused will often incur minimal, if any, costs. Requesters interested in this means of access should so indicate in their correspondence. Effective November 1, 1997 and consistent with the mandate of the Electronic Freedom of Information Act Amendments of 1996, on-the public. Detailed information regarding such access will line electronic access to these records will be available to be available at that time from the point of contact specified in §1900.03.

(c) *Effect of certain exemptions.* In processing a request, the Agency shall decline to confirm or deny the existence or nonexistence of any responsive records whenever the fact of their existence or nonexistence is itself classified under Executive Order 12958 or revealing of intelligence sources and methods protected pursuant to section 103(c)(5) of the National Security Act of 1947. In such circumstances, the Agency, in the form of a final written response, shall so inform the requester and advise of his or her right to an administrative appeal.

(d) *Time for response.* The Agency will utilize every effort to determine within the statutory guideline of ten (10) days after receipt of an initial request whether to comply with such a request. However, the current volume of requests require that the Agency seek additional time from a requester pursuant to 32 CFR 1900.33. In such event, the Agency will inform the requester in writing and further advise of his or her right to file an administrative appeal of any adverse determination. Effective October 2, 1997, the ten (10) day provision is modified to twenty (20) days pursuant to the Electronic Freedom of Information Act Amendments of 1996.

§ 1900.22 Action and determination(s) by originator(s) or any interested party.

(a) *Initial action for access.* CIA components tasked pursuant to a FOIA request shall search all relevant record systems within their cognizance which have not been excepted from search by the provisions of the CIA Information Act of 1984. They shall:

(1) Determine whether a record exists;

(2) Determine whether and to what extent any FOIA exemptions apply;

(3) Approve the disclosure of all nonexempt records or portions of records for which they are the originator; and

(4) Forward to the Coordinator all records approved for release or necessary for coordination with or referral to another originator or interested party. In making these decisions, the CIA component officers shall be guided by the applicable law as well as the procedures specified at 32 CFR 1900.31 and 32 CFR 1900.32 regarding confidential commercial information and personal information (about persons other than the requester).

(b) *Referrals and coordinations.* As applicable and within ten (10) days of receipt by the Coordinator, any CIA records containing information originated by other CIA components shall be forwarded to those entities for action in accordance with paragraph (a)

of this section and return. Records originated by other federal agencies or CIA records containing other federal agency information shall be forwarded to such agencies within ten (10) days of our completion of initial action in the case for action under their regulations and direct response to the requester (for other agency records) or return to the CIA (for CIA records). Effective October 2, 1997, the ten (10) day provision is modified to twenty (20) days pursuant to the Electronic Freedom of Information Act Amendments of 1996.

§ 1900.23 Payment of fees, notification of decision, and right of appeal.

(a) *Fees in general.* Fees collected under this part do not accrue to the Central Intelligence Agency and shall be deposited immediately to the general account of the United States Treasury.

(b) *Notification of decision.* Upon completion of all required review and the receipt of accrued fees (or promise to pay such fees), the Agency will promptly inform the requester in writing of those records or portions of records which may be released and which must be denied. With respect to the former, the Agency will provide copies; with respect to the latter, the Agency shall explain the reasons for the denial, identify the person(s) responsible for such decisions by name and title, and give notice of a right of administrative appeal.

(c) *Availability of reading room.* As an alternative to receiving records by mail, a requester may arrange to inspect the records deemed releasable at a CIA "reading room" in the metropolitan Washington, DC area. Access will be granted after applicable and accrued fees have been paid. Requests to review or browse documents in our database of "officially released records" will also be honored in this manner to the extent that paper copies or electronic copies in unclassified computer systems exist. All such requests shall be in writing and addressed pursuant to 32 CFR 1900.03. The records will be available at such times as mutually agreed but not less than three (3) days from our receipt of a request. The requester will be responsible for reproduction charges for any copies of records desired.

ADDITIONAL ADMINISTRATIVE MATTERS

§ 1900.31 Procedures for business information.

(a) *In general.* Business information obtained by the Central Intelligence Agency by a submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. For purposes of this section, the following definitions apply:

(1) *Business information* means commercial or financial information in which a legal entity has a recognized property interest;

(2) *Confidential commercial information* means such business information provided to the United States Government by a submitter which is reasonably believed to contain information exempt from release under exemption (b)(4) of the Freedom of Information Act, 5 U.S.C. 552, because disclosure could reasonably be expected to cause substantial competitive harm;

(3) *Submitter* means any person or entity who provides confidential commercial information to the United States Government; it includes, but is not limited to, corporations, businesses (however organized), state governments, and foreign governments; and

(b) *Designation of confidential commercial information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be confidential commercial information and hence protected from required disclosure pursuant to exemption (b)(4). Such designations shall expire ten (10) years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(c) *Process in event of FOIA request*—(1) *Notice to submitters.* The Agency shall provide a submitter with prompt written notice of receipt of a Freedom of Information Act request encompassing business information whenever:

(i) The submitter has in good faith designated the information as confidential commercial information, or

(ii) The Agency believes that disclosure of the information could reasonably be expected to cause substantial competitive harm, and

(iii) The information was submitted within the last ten (10) years unless the submitter requested and provided acceptable justification for a specific notice period of greater duration.

(2) *Form of notice.* This notice shall either describe the exact nature of the confidential commercial information at issue or provide copies of the responsive records containing such information.

(3) *Response by submitter.* (i) Within seven (7) days of the above notice, all claims of confidentiality by a submitter must be supported by a detailed statement of any objection to disclosure. Such statement shall:

(A) Specify that the information has not been disclosed to the public;

(B) Explain why the information is contended to be a trade secret or confidential commercial information;

(C) Explain how the information is capable of competitive damage if disclosed;

(D) State that the submitter will provide the Agency and the Department of Justice with such litigation defense as requested; and

(E) Be certified by an officer authorized to legally bind the corporation or similar entity.

(ii) It should be noted that information provided by a submitter pursuant to this provision may itself be subject to disclosure under the FOIA.

(4) *Decision and notice of intent to disclose.* (i) The Agency shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to its final determination. If the Agency decides to disclose a document over the objection of a submitter, the Agency shall provide the submitter a written notice which shall include:

(A) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(B) A description of the information to be disclosed; and

(C) A specified disclosure date which is seven (7) days after the date of the instant notice.

(ii) When notice is given to a submitter under this section, the Agency shall also notify the requester and, if the Agency notifies a submitter that it intends to disclose information, then the requester shall be notified also and given the proposed date for disclosure.

(5) *Notice of FOIA lawsuit.* If a requester initiates a civil action seeking to compel disclosure of information asserted to be within the scope of this section, the Agency shall promptly notify the submitter. The submitter, as specified above, shall provide such litigation assistance as required by the Agency and the Department of Justice.

(6) *Exceptions to notice requirement.* The notice requirements of this section shall not apply if the Agency determines that:

(i) The information should not be disclosed in light of other FOIA exemptions;

(ii) The information has been published lawfully or has been officially made available to the public;

(iii) The disclosure of the information is otherwise required by law or federal regulation; or

(iv) The designation made by the submitter under this section appears frivolous, except that, in such a case, the Agency will, within a reasonable time prior to the specified disclosure date, give the submitter written notice of any final decision to disclose the information.

§ 1900.32 Procedures for information concerning other persons.

(a) *In general.* Personal information concerning individuals other than the requester shall not be disclosed under the Freedom of Information Act if the proposed release would constitute a clearly unwarranted invasion of personal privacy. See 5 U.S.C. 552(b)(6). For purposes of this section, the following definitions apply:

(1) *Personal information* means any information about an individual that is not a matter of public record, or easily discernible to the public, or protected from disclosure because of the implications that arise from Government possession of such information.

(2) *Public interest* means the public interest in understanding the operations and activities of the United States Government and not simply any matter which might be of general interest

to the requester or members of the public.

(b) *Determination to be made.* In making the required determination under this section and pursuant to exemption (b)(6) of the FOIA, the Agency will balance the privacy interests that would be compromised by disclosure against the public interest in release of the requested information.

(c) *Otherwise.* A requester seeking information on a third person is encouraged to provide a signed affidavit or declaration from the third person waiving all or some of their privacy rights. However, all such waivers shall be narrowly construed and the Coordinator, in the exercise of his discretion and administrative authority, may seek clarification from the third party prior to any or all releases.

§ 1900.33 Allocation of resources; agreed extensions of time.

(a) *In general.* Agency components shall devote such personnel and other resources to the responsibilities imposed by the Freedom of Information Act as may be appropriate and reasonable considering:

(1) The totality of resources available to the component,

(2) The business demands imposed on the component by the Director of Central Intelligence or otherwise by law,

(3) The information review and release demands imposed by the Congress or other governmental authority, and

(4) The rights of all members of the public under the various information review and disclosure laws.

(b) *Discharge of FOIA responsibilities.* Components shall exercise due diligence in their responsibilities under the FOIA and must allocate a reasonable level of resources to requests under the Act in a strictly "first-in, first-out" basis and utilizing two or more processing queues to ensure that smaller as well as larger (i.e., project) cases receive equitable attention. The Information and Privacy Coordinator is responsible for management of the Agency-wide program defined by this part and for establishing priorities for cases consistent with established law. The Director, Information Management through the Agency Release Panel shall provide policy and resource direction as necessary and render decisions on administrative appeals.

(c) *Requests for extension of time.* When the Agency is unable to meet the statutory time requirements of the FOIA, it will inform the requester that the request cannot be processed within the statutory time limits, provide an opportunity for the requester to limit the scope of the request so that it can be processed within the statutory time limits, or arrange with the requester an agreed upon time frame for processing the request, or determine that exceptional circumstances mandate additional time. In such instances the Agency will, however, inform a requester of his or her right to decline our request and proceed with an administrative appeal or judicial review as appropriate. Effective October 2 1997, the definition of exceptional circumstances is modified per section 552(a)(6)(C) of the Freedom of Information Act, as amended.

§ 1900.34 Requests for expedited processing.

(a) *In general.* All requests will be handled in the order received on a strictly "first-in, first-out" basis. Exceptions to this rule will only be made in accordance with the following procedures. In all circumstances, however, and consistent with established judicial precedent, requests more properly the scope of requests under the Federal Rules of Civil or Criminal Procedure (or other federal, state, or foreign judicial or quasi-judicial rules) will not be granted expedited processing under this or related (e.g., Privacy Act) provisions unless expressly ordered by a federal court of competent jurisdiction.

(b) *Procedure prior to October 2, 1997.* Requests for expedited processing shall be granted only in circumstances that the Agency deems to be exceptional. In making this determination, the Agency shall consider and must decide in the affirmative on all of the following factors:

(i) That there is a genuine need for the specific requested records; and

(ii) That the personal need is exceptional; and

(iii) That there are no alternative forums for the records or information sought; and

(iv) That it is reasonably believed that substantive records relevant to the stated needs may exist and be deemed releasable.

(2) In sum, requests shall be considered for expedited processing only when health, humanitarian, or due process considerations involving possible deprivation of life or liberty create circumstances of exceptional urgency and extraordinary need.

(c) *Procedure on or after October 2, 1997.* Requests for expedited processing will be approved only when a compelling need is established to the satisfaction of the Agency. A requester may make such a request with a certification of "compelling need" and, within ten (10) days of receipt, the Agency will decide whether to grant expedited processing and will notify the requester of its decision. The certification shall set forth with specificity the relevant facts upon which the requester relies and it appears to the Agency that substantive records relevant to the stated needs may exist and be deemed releasable. A "compelling need" is deemed to exist:

(1) When the matter involves an imminent threat to the life or physical safety of an individual; or

(2) When the request is made by a person primarily engaged in disseminating information and the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity.

CIA ACTION ON FOIA ADMINISTRATIVE APPEALS

§ 1900.41 Establishment of appeals structure.

(a) *In general.* Two administrative entities have been established by the Director of Central Intelligence to facilitate the processing of administrative appeals under the Freedom of Information Act. Their membership, authority, and rules of procedure are as follows.

(b) *Historical Records Policy Board ("HRPB" or "Board").* This Board, the successor to the CIA Information Review Committee, acts as the senior corporate board in the CIA on all matters of information review and release.

(1) *Membership.* The HRPB is composed of the Executive Director, who serves as its Chair, the Deputy Director for Administration, the Deputy Director for Intelligence, the Deputy Director for Operations, the Deputy Director for Science and Technology, the General Counsel, the Director of Congressional Affairs, the Director of the Public Affairs Staff, the Director, Center for the Study of Intelligence, and the Associate Deputy Director for Administration/Information Services, or their designees.

(2) *Authorities and activities.* The HRPB, by majority vote, may delegate to one or more of its members the authority to act on any appeal or other matter or authorize the Chair to delegate such authority, as long as such delegation is not to the same individual or body who made the initial denial. The Executive Secretary of the HRPB is the Director, Information Management. The Chair may request interested parties to participate when special equities or expertise are involved.

(c) *Agency Release Panel ("ARP" or "Panel").* The HRPB, pursuant to its delegation of authority, has established a subordinate Agency Release Panel.

(1) *Membership.* The ARP is composed of the Director, Information Management, who serves as its Chair; the Information Review Officers from the Directorates of Administration, Intelligence, Operations, Science and Technology, and the Director of Central Intelligence Area; the CIA Information and Privacy Coordinator; the Chief, Historical Review Group; the Chair, Publications Review Board; the Chief, Records Declassification Program; and representatives from the Office of General Counsel, the Office of Congressional Affairs, and the Public Affairs Staff.

(2) *Authorities and activities.* The Panel shall meet on a regular schedule and may take action when a simple majority of the total membership is present. The Panel shall advise and assist the HRPB on all information release issues, monitor the adequacy and timeliness of Agency releases, set component search and review priorities, review adequacy of resources available to and planning for all Agency release programs, and perform such other functions as deemed necessary by the

Board. The Information and Privacy Coordinator also serves as Executive Secretary of the Panel. The Chair may request interested parties to participate when special equities or expertise are involved. The Panel, functioning as a committee of the whole or through individual members, will make final Agency decisions from appeals of initial adverse decisions under the Freedom of Information Act and such other information release decisions made under 32 CFR parts 1901, 1907, and 1908. Issues shall be decided by a majority of members present; in all cases of a divided vote, any member of the ARP then present may refer such matter to the HRPB by written memorandum to the Executive Secretary of the HRPB. Matters decided by the Panel or Board will be deemed a final decision by the Agency.

§ 1900.42 Right of appeal and appeal procedures.

(a) *Right of Appeal.* A right of administrative appeal exists whenever access to any requested record or any portion thereof is denied, no records are located in response to a request, or a request for a fee waiver is denied. The Agency will apprise all requesters in writing of their right to appeal such decisions to the CIA Agency Release Panel through the Coordinator.

(b) *Requirements as to time and form.* Appeals of decisions must be received by the Coordinator within forty-five (45) days of the date of the Agency's initial decision. The Agency may, for good cause and as a matter of administrative discretion, permit an additional thirty (30) days for the submission of an appeal. All appeals shall be in writing and addressed as specified in 32 CFR 1900.03. All appeals must identify the documents or portions of documents at issue with specificity and may present such information, data, and argument in support as the requester may desire.

(c) *Exceptions.* No appeal shall be accepted if the requester has outstanding fees for information services at this or another federal agency. In addition, no appeal shall be accepted if the information in question has been the subject of a review within the previous two (2) years or is the subject of pending litigation in the federal courts.

(d) *Receipt, recording, and tasking.* The Agency shall promptly record each request received under this part, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the Deputy Director(s) in charge of the directorate(s) which originated or has an interest in the record(s) subject to the appeal. As used herein, the term Deputy Director includes an equivalent senior official in the DCI-area as well as a designee known as the Information Review Officer for a directorate or area.

(e) *Time for response.* The Agency shall attempt to complete action on an appeal within twenty (20) days of the date of receipt. The current volume of requests, however, often requires that the Agency request additional time from the requester pursuant to 32 CFR 1900.33. In such event, the Agency will inform the requester of the right to judicial review.

§ 1900.43 Determination(s) by Deputy Director(s).

Each Deputy Director in charge of a directorate which originated or has an interest in any of the records subject to the appeal, or designee, is a required party to any appeal; other interested parties may become involved through the request of the Coordinator when it is determined that some or all of the information is also within their official cognizance. These parties shall respond in writing to the Coordinator with a finding as to the exempt status of the information. This response shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the parties and consistent with the information rights of members of the general public under the various information review and release laws.

§ 1900.44 Action by appeals authority.

(a) *Preparation of docket.* The Coordinator, acting in the capacity of Executive Secretary of the Agency Release

Panel, shall place administrative appeals of FOIA requests ready for adjudication on the agenda at the next occurring meeting of that Panel. The Executive Secretary shall provide a summation memorandum for consideration of the members; the complete record of the request consisting of the request, the document(s) (sanitized and full text) at issue, and the findings of the concerned Deputy Director(s) or designee(s).

(b) *Decision by the Agency Release Panel*. The Agency Release Panel shall meet and decide requests sitting as a committee of the whole. Decisions are by majority vote of those present at a meeting and shall be based on the written record and their deliberations; no personal appearances shall be permitted without the express permission of the Panel.

(c) *Decision by the Historical Records Policy Board*. In any cases of divided vote by the ARP, any member of that body is authorized to refer the request to the CIA Historical Records Policy Board which acts as the senior corporate board for the Agency. The record compiled (the request, the memoranda filed by the originator and interested parties, and the previous decision(s)) as well as any memorandum of law or policy the referent desires to be considered, shall be certified by the Executive Secretary of the Agency Release Panel and shall constitute the official record of the proceedings and must be included in any subsequent filings.

§ 1900.45 Notification of decision and right of judicial review.

The Executive Secretary of the Agency Release Panel shall promptly prepare and communicate the decision of the Panel or Board to the requester. With respect to any decision to deny information, that correspondence shall state the reasons for the decision, identify the officer responsible, and include a notice of a right to judicial review.

PART 1901—PUBLIC RIGHTS UNDER THE PRIVACY ACT OF 1974

GENERAL

Sec.
1901.01 Authority and purpose.
1901.02 Definitions.
1901.03 Contact for general information and requests.
1901.04 Suggestions and complaints.

FILING OF PRIVACY ACT REQUESTS

1901.11 Preliminary information.
1901.12 Requirements as to form.
1901.13 Requirements as to identification of requester.
1901.14 Fees.

ACTION ON PRIVACY ACT REQUESTS

1901.21 Processing requests for access to or amendment of records.
1901.22 Action and determination(s) by originator(s) or any interested party.
1901.23 Notification of decision and right of appeal.

ADDITIONAL ADMINISTRATIVE MATTERS

1901.31 Special procedures for medical and psychological records.
1901.32 Requests for expedited processing.
1901.33 Allocation of resources; agreed extensions of time.

ACTION ON PRIVACY ACT ADMINISTRATIVE APPEALS

1901.41 Establishment of appeals structure.
1901.42 Right of appeal and appeal procedures.
1901.43 Determination(s) by Deputy Director(s).
1901.44 Action by appeals authority.
1901.45 Notification of decision and right of judicial review.

PROHIBITIONS

1901.51 Limitations on disclosure.
1901.52 Criminal penalties.

EXEMPTIONS

1901.61 Purpose and authority.
1901.62 General exemptions.
1901.63 Specific exemptions.

AUTHORITY: National Security Act of 1947, as amended; Central Intelligence Agency Act of 1949, as amended; Privacy Act, as amended; and Executive Order 12958 (or successor Orders).

SOURCE: 62 FR 32488, June 16, 1997, unless otherwise noted.

GENERAL

§ 1901.01 Authority and purpose.

(a) *Authority*. This part is issued under the authority of and in order to implement the Privacy Act of 1974 (5 U.S.C. 552a); sec. 102 of the National Security Act of 1947, as amended (50

U.S.C. 403); and sec. 6 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403g).

(b) *Purpose in general.* This part prescribes procedures for a requester, as defined herein:

(1) To request notification of whether the Central Intelligence Agency maintains a record concerning them in any non-exempt portion of a system of records or any non-exempt system of records;

(2) To request a copy of all non-exempt records or portions of records;

(3) To request that any such record be amended or augmented; and

(4) To file an administrative appeal to any initial adverse determination to deny access to or amend a record.

(c) *Other purposes.* This part also sets forth detailed limitations on how and to whom the Agency may disclose personal information and gives notice that certain actions by officers or employees of the United States Government or members of the public could constitute criminal offenses.

§ 1901.02 Definitions.

For purposes of this part, the following terms have the meanings indicated:

(a) *Agency* or *CIA* means the United States Central Intelligence Agency acting through the CIA Information and Privacy Coordinator;

(b) *Days* means calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

(c) *Control* means ownership or the authority of the CIA pursuant to federal statute or privilege to regulate official or public access to records;

(d) *Coordinator* means the CIA Information and Privacy Coordinator who serves as the Agency manager of the information review and release program instituted under the Privacy Act;

(e) *Federal agency* means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

(f) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue;

(g) *Maintain* means maintain, collect, use, or disseminate;

(h) *Originator* means the U.S. Government official who originated the document at issue or successor in office or such official who has been delegated release or declassification authority pursuant to law;

(i) *Privacy Act* or *PA* means the statute as codified at 5 U.S.C. 552a;

(j) *Record* means an item, collection, or grouping of information about an individual that is maintained by the Central Intelligence Agency in a system of records;

(k) *Requester* or *individual* means a citizen of the United States or an alien lawfully admitted for permanent residence who is a living being and to whom a record might pertain;

(l) *Responsive record* means those documents (records) which the Agency has determined to be within the scope of a Privacy Act request;

(m) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which the record is maintained;

(n) *System of records* means a group of any records under the control of the Central Intelligence Agency from which records are retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to that individual.

§ 1901.03 Contact for general information and requests.

For general information on this part, to inquire about the Privacy Act program at CIA, or to file a Privacy Act request, please direct your communication in writing to the Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC. 20505. Requests with the required identification statement pursuant to 32 CFR 1901.13 must be filed in original form by mail. Subsequent communications and

any inquiries will be accepted by mail or facsimile at (703) 613–3007 or by telephone at (703) 613–1287. Collect calls cannot be accepted.

§ 1901.04 Suggestions and complaints.

The Agency welcomes suggestions or complaints with regard to its administration of the Privacy Act. Many requesters will receive pre-paid, customer satisfaction survey cards. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. The Agency will respond to all substantive communications and take such actions as determined feasible and appropriate.

FILING OF PRIVACY ACT REQUESTS

§ 1901.11 Preliminary information.

Members of the public shall address all communications to the contact specified at § 1901.03 and clearly delineate the communication as a request under the Privacy Act and this regulation. Requests and administrative appeals on requests, referrals, and coordinations received from members of the public who owe outstanding fees for information services at this or other federal agencies will not be accepted and action on existing requests and appeals will be terminated in such circumstances.

§ 1901.12 Requirements as to form.

(a) *In general.* No particular form is required. All requests must contain the identification information required at § 1901.13.

(b) *For access.* For requests seeking access, a requester should, to the extent possible, describe the nature of the record sought and the record system(s) in which it is thought to be included. Requesters may find assistance from information described in the Privacy Act Issuances Compilation which is published biannually by the FEDERAL REGISTER. In lieu of this, a requester may simply describe why and under what circumstances it is believed that this Agency maintains responsive records; the Agency will undertake the appropriate searches.

(c) *For amendment.* For requests seeking amendment, a requester should identify the particular record or portion subject to the request, state a justification for such amendment, and provide the desired amending language.

§ 1901.13 Requirements as to identification of requester.

(a) *In general.* Individuals seeking access to or amendment of records concerning themselves shall provide their full (legal) name, address, date and place of birth, and current citizenship status together with a statement that such information is true under penalty of perjury or a notarized statement swearing to or affirming identity. If the Agency determines that this information is not sufficient, the Agency may request additional or clarifying information.

(b) *Requirement for aliens.* Only aliens lawfully admitted for permanent residence (PRAs) may file a request pursuant to the Privacy Act and this part. Such individuals shall provide, in addition to the information required under paragraph (a) of this section, their Alien Registration Number and the date that status was acquired.

(c) *Requirement for representatives.* The parent or guardian of a minor individual, the guardian of an individual under judicial disability, or an attorney retained to represent an individual shall provide, in addition to establishing the identity of the minor or individual represented as required in paragraph (a) or (b) of this section, evidence of such representation by submission of a certified copy of the minor's birth certificate, court order, or representational agreement which establishes the relationship and the requester's identity.

(d) *Procedure otherwise.* If a requester or representative fails to provide the information in paragraph (a), (b), or (c) of this section within forty-five (45) days of the date of our request, the Agency will deem the request closed. This action, of course, would not prevent an individual from refiling his or her Privacy Act request at a subsequent date with the required information.

§ 1901.14 Fees.

No fees will be charged for any action under the authority of the Privacy Act, 5 U.S.C. 552a, irrespective of the fact

that a request is or may be processed under the authority of both the Privacy Act and the Freedom of Information Act.

ACTION ON PRIVACY ACT REQUESTS

§ 1901.21 Processing requests for access to or amendment of records.

(a) *In general.* Requests meeting the requirements of 32 CFR 1901.11 through 1901.13 shall be processed under both the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a, and the applicable regulations, unless the requester demands otherwise in writing. Such requests will be processed under both Acts regardless of whether the requester cites one Act in the request, both, or neither. This action is taken in order to ensure the maximum possible disclosure to the requester.

(b) *Receipt, recording and tasking.* Upon receipt of a request meeting the requirements of §§1901.11 through 1901.13, the Agency shall within ten (10) days record each request, acknowledge receipt to the requester, and thereafter effect the necessary taskings to the components reasonably believed to hold responsive records.

(c) *Effect of certain exemptions.* In processing a request, the Agency shall decline to confirm or deny the existence or nonexistence of any responsive records whenever the fact of their existence or nonexistence is itself classified under Executive Order 12958 or revealing of intelligence sources and methods protected pursuant to section 103(c)(5) of the National Security Act of 1947. In such circumstances, the Agency, in the form of a final written response, shall so inform the requester and advise of his or her right to an administrative appeal.

(d) *Time for response.* Although the Privacy Act does not mandate a time for response, our joint treatment of requests under both the Privacy Act and the FOIA means that the Agency should provide a response within the FOIA statutory guideline of ten (10) days on initial requests and twenty (20) days on administrative appeals. However, the current volume of requests require that the Agency often seek additional time from a requester pursuant to 32 CFR 1901.33. In such event, the Agency will inform the requester in writing and further advise of his or her right to file an administrative appeal.

§ 1901.22 Action and determination(s) by originator(s) or any interested party.

(a) *Initial action for access.* CIA components tasked pursuant to a Privacy Act access request shall search all relevant record systems within their cognizance. They shall:

(1) Determine whether responsive records exist;

(2) Determine whether access must be denied in whole or part and on what legal basis under both Acts in each such case;

(3) Approve the disclosure of records for which they are the originator; and

(4) Forward to the Coordinator all records approved for release or necessary for coordination with or referral to another originator or interested party as well as the specific determinations with respect to denials (if any).

(b) *Initial action for amendment.* CIA components tasked pursuant to a Privacy Act amendment request shall review the official records alleged to be inaccurate and the proposed amendment submitted by the requester. If they determine that the Agency's records are not accurate, relevant, timely or complete, they shall promptly:

(1) Make the amendment as requested;

(2) Write to all other identified persons or agencies to whom the record has been disclosed (if an accounting of the disclosure was made) and inform of the amendment; and

(3) Inform the Coordinator of such decisions.

(c) *Action otherwise on amendment request.* If the CIA component records manager declines to make the requested amendment or declines to make the requested amendment but agrees to augment the official records, that manager shall promptly:

(1) Set forth the reasons for refusal; and

(2) Inform the Coordinator of such decision and the reasons therefore.

(d) *Referrals and coordinations.* As applicable and within ten (10) days of receipt by the Coordinator, any CIA records containing information originated by other CIA components shall be forwarded to those entities for action in accordance with paragraphs (a), (b), or (c) of this section and return. Records originated by other federal agencies or CIA records containing other federal agency information shall be forwarded to such agencies within ten (10) days of our completion of initial action in the case for action under their regulations and direct response to the requester (for other agency records) or return to the CIA (for CIA records).

(e) *Effect of certain exemptions.* This section shall not be construed to allow access to systems of records exempted by the Director of Central Intelligence pursuant to subsections (j) and (k) of the Privacy Act or where those exemptions require that the CIA can neither confirm nor deny the existence or nonexistence of responsive records.

§ 1901.23 Notification of decision and right of appeal.

Within ten (10) days of receipt of responses to all initial taskings and subsequent coordinations (if any), and dispatch of referrals (if any), the Agency will provide disclosable records to the requester. If a determination has been made not to provide access to requested records (in light of specific exemptions) or that no records are found, the Agency shall so inform the requester, identify the denying official, and advise of the right to administrative appeal.

ADDITIONAL ADMINISTRATIVE MATTERS

§ 1901.31 Special procedures for medical and psychological records.

(a) *In general.* When a request for access or amendment involves medical or psychological records and when the originator determines that such records are not exempt from disclosure, the Agency will, after consultation with the Director of Medical Services, determine:

(1) Which records may be sent directly to the requester and

(2) Which records should not be sent directly to the requester because of possible medical or psychological harm to the requester or another person.

(b) *Procedure for records to be sent to physician.* In the event that the Agency determines, in accordance with paragraph (a)(2) of this section, that records should not be sent directly to the requester, the Agency will notify the requester in writing and advise that the records at issue can be made available only to a physician of the requester's designation. Upon receipt of such designation, verification of the identity of the physician, and agreement by the physician:

(1) To review the documents with the requesting individual,

(2) To explain the meaning of the documents, and

(3) To offer counseling designed to temper any adverse reaction, the Agency will forward such records to the designated physician.

(c) *Procedure if physician option not available.* If within sixty (60) days of the paragraph (a)(2) of this section, the requester has failed to respond or designate a physician, or the physician fails to agree to the release conditions, the Agency will hold the documents in abeyance and advise the requester that this action may be construed as a technical denial. The Agency will also advise the requester of the responsible official and of his or her rights to administrative appeal and thereafter judicial review.

§ 1901.32 Requests for expedited processing.

(a) All requests will be handled in the order received on a strictly "first-in, first-out" basis. Exceptions to this rule will only be made in circumstances that the Agency deems to be exceptional. In making this determination, the Agency shall consider and must decide in the affirmative on all of the following factors:

(1) That there is a genuine need for the records; and

(2) That the personal need is exceptional; and

(3) That there are no alternative forums for the records sought; and

(4) That it is reasonably believed that substantive records relevant to the

stated needs may exist and be deemed releasable.

(b) In sum, requests shall be considered for expedited processing only when health, humanitarian, or due process considerations involving possible deprivation of life or liberty create circumstances of exceptional urgency and extraordinary need. In accordance with established judicial precedent, requests more properly the scope of requests under the Federal Rules of Civil or Criminal Procedure (or equivalent state rules) will not be granted expedited processing under this or related (e.g., Freedom of Information Act) provisions unless expressly ordered by a federal court of competent jurisdiction.

§ 1901.33 Allocation of resources; agreed extensions of time.

(a) *In general.* Agency components shall devote such personnel and other resources to the responsibilities imposed by the Privacy Act as may be appropriate and reasonable considering:

(1) The totality of resources available to the component,

(2) The business demands imposed on the component by the Director of Central Intelligence or otherwise by law,

(3) The information review and release demands imposed by the Congress or other governmental authority, and

(4) The rights of all members of the public under the various information review and disclosure laws.

(b) *Discharge of Privacy Act responsibilities.* Components shall exercise due diligence in their responsibilities under the Privacy Act and must allocate a reasonable level of resources to requests under the Act in a strictly "first-in, first-out" basis and utilizing two or more processing queues to ensure that smaller as well as larger (i.e., project) cases receive equitable attention. The Information and Privacy Coordinator is responsible for management of the Agency-wide program defined by this part and for establishing priorities for cases consistent with established law. The Director, Information Management through the Agency Release Panel shall provide policy and resource direction as necessary and shall make determinations on administrative appeals.

(c) *Requests for extension of time.* While the Privacy Act does not specify time requirements, our joint treatment of requests under the FOIA means that when the Agency is unable to meet the statutory time requirements of the FOIA, the Agency may request additional time from a requester. In such instances the Agency will inform a requester of his or her right to decline our request and proceed with an administrative appeal or judicial review as appropriate.

ACTION ON PRIVACY ACT ADMINISTRATIVE APPEALS

§ 1901.41 Establishment of appeals structure.

(a) *In general.* Two administrative entities have been established by the Director of Central Intelligence to facilitate the processing of administrative appeals under the Freedom of Information Act. Their membership, authority, and rules of procedure are as follows.

(b) *Historical Records Policy Board ("HRPB" or "Board").* This Board, the successor to the CIA Information Review Committee, acts as the senior corporate board in the CIA on all matters of information review and release.

(1) *Membership.* The HRPB is composed of the Executive Director, who serves as its Chair, the Deputy Director for Administration, the Deputy Director for Intelligence, the Deputy Director for Operations, the Deputy Director for Science and Technology, the General Counsel, the Director of Congressional Affairs, the Director of the Public Affairs Staff, the Director, Center for the Study of Intelligence, and the Associate Deputy Director for Administration/Information Services, or their designees.

(2) *Authorities and activities.* The HRPB, by majority vote, may delegate to one or more of its members the authority to act on any appeal or other matter or authorize the Chair to delegate such authority, as long as such delegation is not to the same individual or body who made the initial denial. The Executive Secretary of the HRPB is the Director, Information Management. The Chair may request interested parties to participate when

special equities or expertise are involved.

(c) *Agency Release Panel ("ARP" or "Panel").* The HRPB, pursuant to its delegation of authority, has established a subordinate Agency Release Panel.

(1) *Membership.* The ARP is composed of the Director, Information Management, who serves as its Chair; the Information Review Officers from the Directorates of Administration, Intelligence, Operations, Science and Technology, and the Director of Central Intelligence Area; the CIA Information and Privacy Coordinator; the Chief, Historical Review Group; the Chair, Publications Review Board; the Chief, Records Declassification Program; and representatives from the Office of General Counsel, the Office of Congressional Affairs, and the Public Affairs Staff.

(2) *Authorities and activities.* The Panel shall meet on a regular schedule and may take action when a simple majority of the total membership is present. The Panel shall advise and assist the HRPB on all information release issues, monitor the adequacy and timeliness of Agency releases, set component search and review priorities, review adequacy of resources available to and planning for all Agency release programs, and perform such other functions as deemed necessary by the Board. The Information and Privacy Coordinator also serves as Executive Secretary of the Panel. The Chair may request interested parties to participate when special equities or expertise are involved. The Panel, functioning as a committee of the whole or through individual members, will make final Agency decisions from appeals of initial adverse decisions under the Freedom of Information Act and such other information release decisions made under 32 CFR parts 1901, 1907, and 1908. Issues shall be decided by a majority of members present; in all cases of a divided vote, any member of the ARP then present may refer such matter to the HRPB by written memorandum to the Executive Secretary of the HRPB. Matters decided by the Panel or Board will be deemed a final decision by the Agency.

§ 1901.42 Right of appeal and appeal procedures.

(a) *Right of Appeal.* A right of administrative appeal exists whenever access to any requested record or any portion thereof is denied, no records are located in response to a request, or a request for amendment is denied. The Agency will apprise all requesters in writing of their right to appeal such decisions to the CIA Agency Release Panel through the Coordinator.

(b) *Requirements as to time and form.* Appeals of decisions must be received by the Coordinator within forty-five (45) days of the date of the Agency's initial decision. The Agency may, for good cause and as a matter of administrative discretion, permit an additional thirty (30) days for the submission of an appeal. All appeals to the Panel shall be in writing and addressed as specified in 32 CFR 1901.03. All appeals must identify the documents or portions of documents at issue with specificity, provide the desired amending language (if applicable), and may present such information, data, and argument in support as the requester may desire.

(c) *Exceptions.* No appeal shall be accepted if the requester has outstanding fees for information services at this or another federal agency. In addition, no appeal shall be accepted if the information in question has been the subject of an administrative review within the previous two (2) years or is the subject of pending litigation in the federal courts.

(d) *Receipt, recording, and tasking.* The Agency shall promptly record each administrative appeal, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the Deputy Director(s) in charge of the directorate(s) which originated or has an interest in the record(s) subject to the appeal. As used herein, the term Deputy Director includes an equivalent senior official within the DCI-area as well as a designee known as the Information Review Officer for a directorate or area.

§ 1901.43 Determination(s) by Deputy Director(s).

Each Deputy Director in charge of a directorate which originated or has an

interest in any of the records subject to the appeal, or designee, is a required party to any appeal; other interested parties may become involved through the request of the Coordinator when it is determined that some or all of the information is also within their official cognizance. These parties shall respond in writing to the Coordinator with a finding as to the exempt or non-exempt status of the information including citations to the applicable exemption and/or their agreement or disagreement as to the requested amendment and the reasons therefore. Each response shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the parties and consistent with the information rights of members of the general public under the various information review and release laws.

§ 1901.44 Action by appeals authority.

(a) *Preparation of docket.* The Coordinator, acting as the Executive Secretary of the Agency Release Panel, shall place administrative appeals of Privacy Act requests ready for adjudication on the agenda at the next occurring meeting of that Panel. The Executive Secretary shall provide a summation memorandum for consideration of the members; the complete record of the request consisting of the request, the document(s) (sanitized and full text) at issue, and the findings of the concerned Deputy Director(s) or designee(s).

(b) *Decision by the Agency Release Panel.* The Agency Release Panel shall meet and decide requests sitting as a committee of the whole. Decisions are by majority vote of those present at a meeting and shall be based on the written record and their deliberations; no personal appearances shall be permitted without the express permission of the Panel.

(c) *Decision by the Historical Records Policy Board.* In any cases of divided vote by the ARP, any member of that body is authorized to refer the request to the CIA Historical Records Policy Board which acts as the senior corporate board for the Agency. The record compiled (the request, the memoranda filed by the originator and interested parties, and the previous decision(s)) as well as any memorandum of law or policy the referent desires to be considered, shall be certified by the Executive Secretary of the Agency Release Panel and shall constitute the official record of the proceedings and must be included in any subsequent filings.

§ 1901.45 Notification of decision and right of judicial review.

(a) *In general.* The Executive Secretary of the Agency Release Panel shall promptly prepare and communicate the decision of the Panel or Board to the requester. With respect to any decision to deny information or deny amendment, that correspondence shall state the reasons for the decision, identify the officer responsible, and include a notice of the right to judicial review.

(b) *For amendment requests.* With further respect to any decision to deny an amendment, that correspondence shall also inform the requester of the right to submit within forty-five (45) days a statement of his or her choice which shall be included in the official records of the CIA. In such cases, the applicable record system manager shall clearly note any portion of the official record which is disputed, append the requester's statement, and provide copies of the statement to previous recipients (if any are known) and to any future recipients when and if the disputed information is disseminated in accordance with a routine use.

PROHIBITIONS

§ 1901.51 Limitations on disclosure.

No record which is within a system of records shall be disclosed by any means of communication to any individual or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be:

(a) To those officers and employees of this Agency which maintains the record who have a need for the record in the performance of their duties;

(b) Required under the Freedom of Information Act, 5 U.S.C. 552;

(c) For a routine use as defined in § 1901.02(m), as contained in the Privacy

Act Issuances Compilation which is published biennially in the FEDERAL REGISTER, and as described in §§(a)(7) and (e)(4)(D) of the Act;

(d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of U.S.C. Title 13;

(e) To a recipient who has provided the Agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or designee to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of that agency or instrumentality has made a written request to the CIA specifying the particular information desired and the law enforcement activity for which the record is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office; or

(k) To any agency, government instrumentality, or other person or entity pursuant to the order of a court of competent jurisdiction of the United States or constituent states.

§ 1901.52 Criminal penalties.

(a) *Unauthorized disclosure.* Criminal penalties may be imposed against any officer or employee of the CIA who, by virtue of employment, has possession of or access to Agency records which contain information identifiable with an individual, the disclosure of which is prohibited by the Privacy Act or by these rules, and who, knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive same.

(b) *Unauthorized maintenance.* Criminal penalties may be imposed against any officer or employee of the CIA who willfully maintains a system of records without meeting the requirements of section (e)(4) of the Privacy Act, 5 U.S.C.552a. The Coordinator and the Inspector General are authorized independently to conduct such surveys and inspect such records as necessary from time to time to ensure that these requirements are met.

(c) *Unauthorized requests.* Criminal penalties may be imposed upon any person who knowingly and willfully requests or obtains any record concerning an individual from the CIA under false pretenses.

EXEMPTIONS

§ 1901.61 Purpose and authority.

Purpose of exemptions. This part sets forth those systems of records or portions of systems of records which the Director of Central Intelligence has determined to exempt from the procedures established by this regulation and from certain provisions of the Privacy Act:

(a) The purpose of the following specified general exemption of polygraph records is to prevent access and review of records which intimately reveal CIA operational methods. The purpose of the general exemption from the provisions of sections (c)(3) and (e)(3) (A)–(D) of the Privacy Act is to avoid disclosures that may adversely affect ongoing operational relationships with other intelligence and related organizations and thus reveal or jeopardize intelligence sources and methods or risk exposure of intelligence sources

and methods in the processing of covert employment applications.

(b) The purpose of the general exemption from sections (d), (e)(4)(G), (f)(1), and (g) of the Privacy Act is to protect only those portions of systems of records which if revealed would risk exposure of intelligence sources and methods or hamper the ability of the CIA to effectively use information received from other agencies or foreign governments.

(c) It should be noted that by subjecting information which would consist of, reveal, or pertain to intelligence sources and methods to separate determinations by the Director of Central Intelligence under the provision entitled "*General exemptions*," 32 CFR 1901.62 regarding access and notice, an intent is established to apply the exemption from access and notice only in those cases where notice in itself would constitute a revelation of intelligence sources and methods; in all cases where only access to information would reveal such source or method, notice will be given upon request.

(d) The purpose of the general exemption for records that consist of, pertain to, or would otherwise reveal the identities of employees who provide information to the Office of the Inspector General is to implement section 17 of the CIA Act of 1949, as amended, 50 U.S.C. 403q(e)(3), and to ensure that no action constituting a reprisal or threat of reprisal is taken because an employee has cooperated with the Office of Inspector General.

(e) The purpose of the specific exemptions provided for under section (k) of the Privacy Act is to exempt only those portions of systems of records which would consist of, reveal, or pertain to that information which is enumerated in that section of the Act.

(f) In each case, the Director of Central Intelligence currently or then in office has determined that the enumerated classes of information should be exempt in order to comply with dealing with the proper classification of national defense or foreign policy information; protect the identification of persons who provide information to the CIA Inspector General; protect the privacy of other persons who supplied information under an implied or express grant of confidentiality in the case of law enforcement or employment and security suitability investigations (or promotion material in the case of the armed services); protect information used in connection with protective services under 18 U.S.C. 3056; protect the efficacy of testing materials; and protect information which is required by statute to be maintained and used solely as statistical records.

§ 1901.62 General exemptions.

(a) Pursuant to authority granted in section (j) of the Privacy Act, the Director of Central Intelligence has determined to exempt from all sections of the Act—except sections 552a(b); (c) (1) and (2); (e) (1), (4) (A)–(F), (5), (6), (7), (9), (10), and (11); and (i)—the following systems of records or portions of records in a system of record:

(1) Polygraph records.

(2) [Reserved]

(b) Pursuant to authority granted in section (j) of the Privacy Act, the Director of Central Intelligence has determined to exempt from sections (c)(3) and (e)(3) (A)–(D) of the Act all systems of records maintained by this Agency.

(c) Pursuant to authority granted in section (j) of the Privacy Act, the Director of Central Intelligence has determined to exempt from notification under sections (e)(4)(G) and (f)(1) those portions of each and all systems of records which have been exempted from individual access under section (j) in those cases where the Coordinator determines after advice by the responsible components that confirmation of the existence of a record may jeopardize intelligence sources and methods. In such cases the Agency must neither confirm nor deny the existence of the record and will advise a requester that there is no record which is available pursuant to the Privacy Act of 1974.

(d) Pursuant to authority granted in section (j) of the Privacy Act, the Director of Central Intelligence has determined to exempt from access by individuals under section (d) of the Act those portions and only those portions of all systems of records maintained by the CIA that:

(1) Consist of, pertain to, or would otherwise reveal intelligence sources and methods;

(2) Consist of documents or information provided by any foreign government entity, international organization, or, any United States federal, state, or other public agency or authority; and

(3) Consist of information which would reveal the identification of persons who provide information to the CIA Inspector General.

(e) Pursuant to authority granted in section (j) of the Privacy Act, the Director of Central Intelligence has determined to exempt from judicial review under section (g) of the Act all determinations to deny access under section (d) of the Act and all decisions to deny notice under sections (e)(4)(G) and (f)(1) of the Act pursuant to determination made under paragraph (c) of this section when it has been determined by an appropriate official of the CIA that such access would disclose information which would:

(1) Consist of, pertain to, or otherwise reveal intelligence sources and methods;

(2) Consist of documents or information provided by any foreign government entity, international organization, or, any United States federal, state, or other public agency or authority; and

(3) Consist of information which would reveal the identification of persons who provide information to the CIA Inspector General.

§ 1901.63 Specific exemptions.

Pursuant to authority granted in section (k) of the Privacy Act, the Director of Central Intelligence has determined to exempt from section (d) of the Privacy Act those portions and only those portions of all systems of records maintained by the CIA that would consist of, pertain to, or otherwise reveal information that is:

(a) Classified pursuant to Executive Order 12958 (or successor or prior Order) and thus subject to the provisions of 5 U.S.C. 552(b)(1) and 5 U.S.C. 552a(k)(1);

(b) Investigatory in nature and compiled for law enforcement purposes, other than material within the scope of section (j)(2) of the Act; provided however, that if an individual is denied any right, privilege, or benefit to which they are otherwise eligible, as a result of the maintenance of such material, then such material shall be provided to that individual except to the extent that the disclosure would reveal the identity of a source who furnished the information to the United States Government under an express promise of confidentiality, or, prior to the effective date of this section, under an implied promise of confidentiality;

(c) Maintained in connection with providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056;

(d) Required by statute to be maintained and used solely as statistical records;

(e) Investigatory in nature and compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the United States Government under an express promise of confidentiality, or, prior to the effective date of this section, under an implied promise of confidentiality;

(f) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(g) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the United States Government under an express promise of confidentiality, or, prior to the effective date of this section, under an implied promise of confidentiality.

PART 1902—INFORMATION SECURITY REGULATIONS

Subparts A–E [Reserved]

Subpart F—Declassification and Downgrading

AUTHORITY: Sec. 5–402 of Executive Order 12065.

§ 1902.13 Declassification and downgrading policy.

(a)–(b) [Reserved]

(c) The Executive Order provides that in some cases the need to protect properly classified information "may be outweighed by the public interest in disclosure of the information," and that "when such questions arise" the competing interests in protection and disclosure are to be balanced. The Order further provides that the information is to be declassified in such cases if the balance is struck in favor of disclosure. The drafters of the Order recognized that such cases would be rare and that declassification decisions in such cases would remain the responsibility of the Executive Branch. For purposes of these provisions, a question as to whether the public interest favoring the continued protection of properly classified information is outweighed by a public interest in the disclosure of that information will be deemed to exist only in circumstances where, in the judgment of the agency, nondisclosure could reasonably be expected to:

(1) Place a person's life in jeopardy.

(2) Adversely affect the public health and safety.

(3) Impede legitimate law enforcement functions.

(4) Impede the investigative or oversight functions of the Congress.

(5) Obstruct the fair administration of justice.

(6) Deprive the public of information indispensable to public decisions on issues of critical national importance (effective for declassification reviews conducted on or after 1 February 1980).

(d) When a case arises that requires a balancing of interests under paragraph (c) above, the reviewing official shall refer the matter to an Agency official having Top Secret classification authority, who shall balance. If it appears that the public interest in disclosure of the information may outweigh any continuing need for its protection, the case shall be referred with a recommendation for decision to the appropriate Deputy Director or Head of Independent Office. If those officials believe disclosure may be warranted, they, in coordination with OGC, as appropriate, shall refer the matter and a recommendation to the DDCI. If the DDCI determines that the public interest in disclosure of the information outweighs any damage to national security that might reasonably be expected to result from disclosure, the information shall be declassified.

[45 FR 64175, Sept. 29, 1980]

PART 1903—CONDUCT ON AGENCY INSTALLATIONS

Sec.
1903.1 Definitions.
1903.2 Applicability.
1903.3 State law applicable.
1903.4 Vehicles and traffic safety.
1903.5 Enforcement of parking regulations.
1903.6 Admission on to an Agency installation.
1903.7 Trespassing.
1903.8 Interfering with Agency functions.
1903.9 Explosives.
1903.10 Weapons.
1903.11 Restrictions on photographic, transmitting, and recording equipment.
1903.12 Alcoholic beverages and controlled substances.
1903.13 Intoxicated on an Agency installation.
1903.14 Disorderly conduct.
1903.15 Preservation of property.
1903.16 Restrictions on animals.
1903.17 Soliciting, vending, and debt collection.
1903.18 Distribution of materials.
1903.19 Gambling.
1903.20 Penalties and effects on other laws.

AUTHORITY: 50 U.S.C. 403o.

SOURCE: 63 FR 44786, Aug. 21, 1998, unless otherwise noted.

§ 1903.1 Definitions.

As used in this part:

Agency installation. For the purposes of this part, the term Agency installation means the property within the Agency Headquarters Compound and the property controlled and occupied by the Federal Highway Administration located immediately adjacent to such Compound, and property within any other Agency installation and protected property (i.e., property owned, leased, or otherwise controlled by the Central Intelligence Agency).

Authorized person. An officer of the Security Protective Service, or any other Central Intelligence Agency employee who has been authorized by the Director of Central Intelligence pursuant to section 15 of the Central Intelligence Agency Act of 1949 to enforce the provisions of this part.

Blasting agents. The term is defined for the purposes of this part as it is defined in Title 18 U.S.C. 841.

Controlled Substance. Any drug or other substance, or immediate precursor that has been defined as a controlled substance in the Controlled Substances Act (Title 21 U.S.C. 801 *et seq*.).

Explosives/Explosive Materials. The term is defined for the purposes of this part as it is defined in Title 18 U.S.C. 841.

Operator. A person who operates, drives, controls, or otherwise has charge of, or is in actual physical control of a mechanical mode of transportation or any other mechanical equipment.

Permit. A written authorization to engage in uses or activities that are otherwise prohibited, restricted, or regulated.

Possession. Exercising direct physical control or dominion, with or without ownership, over the property.

State law. The applicable and nonconflicting laws, statutes, regulations, ordinances, and codes of the State(s) and other political subdivision(s) within whose exterior boundaries an Agency installation or a portion thereof is located.

Traffic. Pedestrians, ridden or herded animals, vehicles, and other conveyances, either singly or together, while using any road, path, street, or other thoroughfare for the purpose of travel.

Vehicles. Any vehicle that is self-propelled or designed for self-propulsion, any motorized vehicle, and any vehicle drawn by or designed to be drawn by a motor vehicle, including any device in, upon, or by which any person or property is or can be transported or drawn upon a roadway, highway, hallway, or pathway; to include any device moved by human or animal power. Whether required to be licensed in any State or otherwise.

Weapons. Any firearms or any other loaded or unloaded pistol, rifle, shotgun, or other weapon which is designed to, or may be readily converted to expel a projectile by ignition of a propellant, by compressed gas, or which is spring-powered. Any bow and arrow, crossbow, blowgun, spear gun, hand-thrown spear, sling-shot, irritant gas device, explosive device, or any other implement designed to discharge missiles; or a weapon, device, instrument, material, or substance, animate or inanimate, that is used for or is readily capable of, causing death or serious bodily injury, including any weapon the possession of which is prohibited under the laws of the State in which the Agency installation or portion thereof is located; except that such term does not include a closing pocket knife with a blade of less than 2½ inches in length.

§ 1903.2 Applicability.

The provisions of this part apply to all Agency installations, and to all persons entering on to or when on an Agency installation. They supplement the provisions of Title 18, United States Code, relating to crimes and criminal procedures, and those provisions of State law that are federal criminal offenses by virtue of the Assimilative Crimes Act, 18 U.S.C. 13. The Director of Central Intelligence, at his discretion, may suspend the applicability of this part, or a portion thereof, on any Agency installation, or any portion of the installation, covered under this part. Where necessary and when consistent with national security requirements notices will be posted on the affected Agency installation to indicate that the applicability of this part or a portion thereof has been suspended.

§ 1903.3 State law applicable.

(a) Unless specifically addressed by the regulations in this part, traffic safety and the permissible use and operation of vehicles within an Agency installation are governed by State law. State law that is now or may later be in effect is adopted and made a part of the regulations in this part.

(b) Violating a provision of State law is prohibited.

§ 1903.4 Vehicles and traffic safety.

(a) *Open container of alcoholic beverage.* (1) Each person within the vehicle is responsible for complying with the provisions of this section that pertain to carrying an open container. The operator of the vehicle is the person responsible for complying with the provisions of this section that pertain to the storage of an open container.

(2) Carrying or storing a bottle, can, or other receptacle containing an alcoholic beverage that is open or has been opened, or whose seal is broken, or the contents of which have been partially removed, within a vehicle on an Agency installation is prohibited.

(3) This section does not apply to:

(i) An open container stored in the trunk of a vehicle or, if a vehicle is not equipped with a trunk, to an open container stored in some other portion of the vehicle designated for the storage of luggage and not normally occupied by or readily accessible to the operator or passenger; or

(ii) An open container stored in the living quarters of a motor home or camper.

(4) For the purpose of paragraph (a)(3)(i) of this section, a utility compartment or glove compartment is deemed to be readily accessible to the operator and passengers of a vehicle.

(b) *Operating under the influence of alcohol, drugs, or controlled substances.* (1) Operating or being in actual physical control of a vehicle is prohibited while.

(i) Under the influence of alcohol, drug or drugs, a controlled substance, or any combination thereof, to a degree that renders the operator incapable of safe operation; or

(ii) The alcohol concentration in the operator's blood is 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams or more alcohol per 210 liters of breath. Provided, however, that if the applicable State law that applies to operating a vehicle while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits supersede the limits specified in this section.

(2) The provisions or paragraph (b)(1) of this section shall also apply to an operator who is or has been legally entitled to use alcohol or another drug.

(3) *Test.* (i) At the request or direction of an authorized person who has probable cause to believe that an operator of a vehicle within an Agency installation has violated a provision of paragraph (b)(1) of this section, the operator shall submit to one or more tests of blood, breath, saliva, or urine for the purpose of determining blood alcohol, drug, and controlled substance content.

(ii) Refusal by an operator to submit to a test is prohibited and may result in detention and citation by an authorized person. Proof of refusal many be admissible in any related judicial proceeding.

(iii) Any test or tests for the presence of alcohol, drugs, and controlled substances shall be determined by and administered at the direction of an officer of the Security Protective Service.

(iv) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability and operated by personnel certified in its use.

(4) *Presumptive levels.* (i) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of this section. If the alcohol concentration in the operator's blood or breath at the time of the testing is less than the alcohol concentration specified in paragraph (b)(1)(ii) of this section this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(ii) The provisions of paragraph (b)(4)(i) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, a drug or drugs, or a controlled substance, or any combination thereof.

[63 FR 44786, Aug. 21, 1998; 64 FR 27041, May 18, 1999]

§ 1903.5 Enforcement of parking regulations.

(a) A vehicle parked in any location without authorization, pursuant to a

fraudulent, fabricated, copied or altered parking permit, or parked contrary to the directions of posted signs or markings, shall be subject to any penalties imposed by this section and the vehicle may be removal from the Agency installation a the owner's risk and expense. The Central Intelligence Agency assumes no responsibility for the payment of any fees or costs related to the removal and/or storage of the vehicle which may be charged to the owner of the vehicle by the towing organization.

(b) The use, attempted use or possession of a fraudulent, fabricated, copied or altered parking permit is prohibited.

(c) The blocking of entrances, driveways, sidewalks, paths, loading platforms, or fire hydrants on an Agency installation is prohibited.

(d) This section may be supplemented or the applicability suspended from time to time by the Director of the Center for CIA Security, or by his or her designee, by the issuance and posting of such parking directives as may be required, and when so issued and posted, such directives shall the same force and effects as if made a part thereof.

(e) Proof that a vehicle was parked in violation of the regulations of this section or directives may be taken as *prima facie* evidence that the registered owner was responsible for the violation.

§ 1903.6 Admission on to an Agency installation.

(a) Access on to any Agency installation shall be controlled and restricted to ensure the orderly and secure conduct of Agency business. Admission on to an Agency installation or into a restricted area on an Agency installation shall be limited to Agency employees and other persons with proper authorization.

(b) All persons entering on to or when on an Agency installation shall, when required and/or requested, produce and display proper identification to authorized persons.

(c) All personal property, including but not limited to any packages, briefcases, other containers or vehicles brought on to, on, or being removed from an Agency installation are subject to inspection and search by authorized persons.

(d) A full search of a person may accompany an investigative stop or an arrest.

(e) Persons entering on to an Agency installation or into a restricted area who refuse to permit an inspection and search will be denied further entry and will be ordered to leave the Agency installation or restricted area pursuant to § 1903.7(a) of this part.

(f) All persons entering on to or when on any Agency installation shall comply with all official signs of a prohibitory, regulatory, or directory nature at all times while on the Agency installation.

(g) All persons entering on to or when on any Agency installation shall comply with the instructions or directions of authorized persons.

§ 1903.7 Trespassing.

(a) Entering, or remaining on any Agency installation without proper authorization is prohibited. Failure to obey an order to leave given under this section by an authorized person, or reentry or attempted reentry onto the Agency installation after being ordered to leave or after being instructed not to reenter by an authorized person under this section is also prohibited.

(b) Any person who violates the provisions of this part may be ordered to leave the Agency installation by an authorized person. A violator's reentry may also be prohibited.

§ 1903.8 Interfering with Agency functions.

The following are prohibited:

(a) *Interference*. Threatening, resisting, intimidating, or intentionally interfering with a government employee or agent engaged in an official duty, or on account of the performance of an official duty.

(b) *Violation of a lawful order*. Violating the lawful order of an authorized person to maintain order and control, public access and movement during fire fighting operations, law enforcement actions, and emergency operations that involve a threat to public safety or government resources, or other activities where the control of public movement and activities is necessary to

maintain order and public health or safety.

(c) *False information*. Knowingly giving false information:

(1) To an authorized person investigating an accident or violation of law or regulation; or

(2) On an application for a permit.

(d) *False report*. Knowingly giving a false report for the purpose of misleading an authorized person in the conduct of official duties, or making a false report that causes a response by the government to a fictitious event.

§ 1903.9 Explosives.

(a) Using, possessing, storing, or transporting explosives, blasting agents, ammunition or explosive materials is prohibited on any Agency installation, except as authorized by the Director of the Center for CIA Security. When permitted, the use, possession, storage, and transportation shall be in accordance with applicable Federal and State laws, and shall also be in accordance with applicable Central Intelligence Agency rules and/or regulations.

(b) Using, possessing, storing, or transporting items intended to be used to fabricate an explosive or incendiary device, either openly or concealed, except for official purposes is prohibited.

§ 1903.10 Weapons.

(a) Except as provided in paragraph (c) of this section, knowingly possessing or causing to be present a weapon on an Agency installation, or attempting to do so is prohibited.

(b) Knowingly possessing or causing to be present a weapon on an Agency installation, incident to hunting or other lawful purposes is prohibited.

(c) This section does not apply—

(1) Where Title 18 U.S.C. 930 applies;

(2) To any person who has received authorization from the Director of the Center for CIA Security, or from his or her designee to possess, carry, transport, or use a weapon in support of the Agency's mission or for other lawful purposes as determined by the Director of the Center for CIA Security;

(3) To the lawful performance of official duties by an officer, agent, or employee of the United States, a State, or a political subdivision thereof, who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law; or

(4) To the possession of a weapon by a Federal official or a member of the Armed Forces if such possession is authorized by law.

§ 1903.11 Restrictions on photographic, transmitting, and recording equipment.

(a) Except as otherwise authorized under this section, the following are prohibited on Agency installations:

(1) Possessing a camera, other visual or audio recording devices, or electronic transmitting equipment of any kind.

(2) Carrying a camera, other visual or audio recording devices, or electronic transmitting equipment of any kind.

(3) Using a camera, other visual or audio recording devices, or electronic transmitting equipment of any kind.

(b) This section does not apply to any person using, possessing or storing a government or privately owned cellular telephone or pager while on any Agency installation. The Central Intelligence Agency may regulate or otherwise administratively control cellular telephones and pagers outside the provisions of this part.

(c) This section does not apply to any officer, agent, or employee of the United States, a State, or a political subdivision thereof, who may enter on to an Agency installation to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of law.

(d) This section does not apply to any person who has received approval from the Director of the Center for CIA Security, or from his or her designee to carry, transport, or use a camera, other visual or audio recording devices, or electronic transmitting equipment while on an Agency installation.

§ 1903.12 Alcoholic beverages and controlled substance.

(a) *Alcoholic beverages*. The possession, transportation of alcoholic beverages in closed containers and their consumption on an Agency installation will be administratively controlled by

the Agency outside the provisions of this part.

(b) *Controlled substances*. The following are prohibited on an Agency installation:

(1) The delivery of a controlled substance, except when distribution is made by a licensed physician or pharmacist in accordance with applicable Federal or State law, or as otherwise permitted by Federal or State law. For the purpose of this paragraph, delivery means the actual, attempt, or constructive transfer of a controlled substance.

(2) The possession of a controlled substance, unless such substance was obtained by the possessor directly from, or pursuant to a valid prescription or ordered by, a licensed physician or pharmacist, or as otherwise allowed by Federal or State law.

§ 1903.13 Intoxicated on an Agency installation.

Presence on an Agency installation when under the influence of alcohol, a drug, or a controlled substance or a combination thereof to a degree that interferes with, impedes or hinders the performance of the official duties of any government employee, or damages government or personal property is prohibited.

§ 1903.14 Disorderly conduct.

A person commits disorderly conduct when, with intent to cause public alarm, nuisance, jeopardy, or violence, or knowingly or recklessly creating a risk thereof, such person commits any of the following prohibited acts:

(a) Engages in fighting or threatening, or in violent behavior.

(b) Acts in a manner that is physically threatening or menacing, or acts in a manner that is likely to inflict injury or incite an immediate breach of peace.

(c) Makes noises that are unreasonable considering the nature and purpose of the actor's conduct, location, time of day or night, and other factors that would govern the conduct of a reasonable prudent person under the circumstances.

(d) Uses obscene language, an utterance, or gesture, or engages in a display or act that is obscene.

(e) Impedes or threatens the security of persons or property, or disrupts the performance of official duties by employees, officers, contractors or visitors on an Agency installation or obstructs the use of areas on an Agency installation such as entrances, foyers, lobbies, corridors, concourses, offices, elevators, stairways, roadways, driveways, walkways, or parking lots.

§ 1903.15 Preservation of property.

The following are prohibited:

(a) *Property Damage*. Destroying or damaging private property.

(b) *Theft*. The theft of private property, except where Title 18 U.S.C. 661 applies.

(c) *Creation of hazard*. The creation of hazard to persons or things, the throwing of articles of any kind from or at buildings, vehicles, or persons while on an Agency installation.

(d) *Improper disposal*. The improper disposal of trash or rubbish while on an Agency installation.

§ 1903.16 Restriction on animals.

Animals, except for those animals used for the assistance of persons with disabilities, or animals under the charge and control of the Central Intelligence Agency, shall not be brought onto an Agency installation for other than official purposes.

§ 1903.17 Soliciting, vending, and debt collection.

Commercial or political soliciting, vending of all kinds, displaying or distributing commercial advertising, collecting private debts or soliciting alms on any Agency installation is prohibited. This does not apply to:

(a) National or local drives for funds for welfare, health, or other purposes as authorized by Title 5 CFR parts 110 and 950 as amended and sponsored or approved by the Director of Central Intelligence, or by his or her designee.

(b) Personal notices posted on authorized bulletin boards and in compliance with Central Intelligence Agency rules governing the use of such authorized bulletin boards advertising to sell or rent property of Central Intelligence Agency employees or their immediate families.

§ 1903.18 Distribution of materials.

Distributing, posting, or affixing materials, such as pamphlets, handbills, or flyers, on any Agency installation is prohibited except as authorized by § 1903.17(b), or by other authorization from the Director of the Center for CIA Security, or from his or her designee.

§ 1903.19 Gambling.

Gambling in any form, or the operation of gambling devices, is prohibited. This prohibition shall not apply to the vending or exchange of chances by licensed blind operators of vending facilities for any lottery set forth in a State law and authorized by the provisions of the Randolph-Sheppard Act (Title 20 U.S.C. 107 *et seq.*).

§ 1903.20 Penalties and effects on other laws.

(a) Whoever shall be found guilty of violating any rule or regulation enumerated in this part is subject to the penalties imposed by Federal law for the commission of a Class B misdemeanor offense.

(b) Nothing in this part shall be construed to abrogate or supersede any other Federal law or any non-conflicting State or local law, ordinance or regulation applicable to any location where the Agency installation is situated.

PART 1904—PROCEDURES GOVERNING ACCEPTANCE OF SERVICE OF PROCESS

Sec.

1904.1 Scope and purpose.
1904.2 Definitions.
1904.3 Procedures governing acceptance of service of process.
1904.4 Notification to CIA Office of General Counsel.
1904.5 Authority of General Counsel.

AUTHORITY: 50 U.S.C. 403g; 50 U.S.C. 403(d)(3); E.O. 12333 sections 1.8(h), 1.8(i), 3.2.

SOURCE: 56 FR 41458, Aug. 21, 1991, unless otherwise noted.

§ 1904.1 Scope and purpose.

(a) This part sets forth the limits of authority of CIA personnel to accept service of process on behalf of the CIA or any CIA employee.

(b) This part is intended to ensure the orderly execution of the Agency's affairs and not to impede any legal proceeding.

(c) CIA regulations concerning employee responses to demands for production of official information in proceedings before federal, state, or local government entities are set out in part 1905 of this chapter.

§ 1904.2 Definitions.

(a) *Agency* or *CIA* means the Central Intelligence Agency and include all staff elements of the Director of Central Intelligence.

(b) *Process* means a summons, complaint, subpoena, or other official paper (except garnishment orders) issued in conjunction with a proceeding or hearing being conducted by a federal, state, or local governmental entity of competent jurisdiction.

(c) *Employee* means any CIA officer, any staff, contract, or other employee of CIA, any person including independent contractors associated with or acting for or on behalf of CIA, and any person formerly having such a relationship with CIA.

(d) *General Counsel* includes the Deputy General Counsel or Acting General Counsel.

§ 1904.3 Procedures governing acceptance of service of process.

(a) *Service of Process Upon the CIA or a CIA Employee in An Official Capacity*—(1) *Personal service*. Unless otherwise expressly authorized by the General Counsel, or designee, personal service of process may be accepted only by attorneys of the Office of General Counsel at CIA Headquarters in Langley, Virginia.

(2) *Mail service*. Where service of process by registered or certified mail is authorized by law, unless expressly directed otherwise by the General Counsel or designee, such process may only be accepted by attorneys of the Office of General Counsel. Process by mail should be addressed as follows: Litigation Division, Office of General Counsel, Central Intelligence Agency, Washington, DC 20505.

(b) *Service of Process Upon a CIA Employee Solely in An Individual Capacity*—(1) *General*. Consistent with section 6 of

the CIA Act of 1949, as amended, 50 U.S.C. 403g, CIA will not provide the name or address of any current or former employee of CIA to individuals or entities seeking to serve process upon such employee solely in his or her individual capacity, even where the matter is related to CIA activities.

(2) *Personal Service*. Subject to the sole discretion of appropriate officials of the CIA, process servers generally will not be allowed to enter CIA facilities or premises for the purpose of serving process upon any CIA employee solely in his or her individual capacity. The Office of General Counsel is not authorized to accept service of process on behalf of a CIA employee—except the Director and Deputy Director of Central Intelligence—in his or her individual capacity.

(3) *Mail Service*. Unless otherwise expressly authorized by the General Counsel, or designee, CIA personnel are not authorized to accept or forward mailed service of process directed to any CIA employee in his or her individual capacity. Any such process will be returned to the sender via appropriate postal channels.

(c) *Service of Process Upon a CIA Employee in A Combined Official and Individual Capacity*. Unless expressly directed otherwise by the General Counsel, or designee, any process to be served upon a CIA employee in his or her combined official and individual capacity, in person or by mail, can be accepted only by attorneys of the Office of General Counsel at CIA Headquarters in Langley, Virginia.

(d) The documents for which service is accepted in official capacity only shall be stamped "Service Accepted in Official Capacity Only." Acceptance of service of process shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under the laws or rules applicable to the service of process.

§ 1904.4 Notification to CIA Office of General Counsel.

A CIA employee who receives or has reason to expect service of process in an individual, official, or combined individual and official capacity, in a matter that may involve testimony or the furnishing of documents and that could reasonably be expected to involve Agency interests, shall promptly notify the Litigation Division, Office of General Counsel (703–874–3118). Such notification should be given prior to providing the requestor, counsel or other representative any Agency information, and prior to accepting service of process.

§ 1904.5 Authority of General Counsel.

Any questions concerning interpretation of this regulation shall be referred to the Office of General Counsel for resolution.

PART 1905—PRODUCTION OF OFFICIAL RECORDS OR DISCLOSURE OF OFFICIAL INFORMATION IN PROCEEDINGS BEFORE FEDERAL, STATE OR LOCAL GOVERNMENTAL ENTITIES OF COMPETENT JURISDICTION

Sec.
1905.1 Scope and purpose.
1905.2 Definitions.
1905.3 General.
1905.4 Procedure for production.

AUTHORITY: 5 U.S.C. 403(d)(3); 50 U.S.C. 403g; United States ex rel. *Touhy* v. *Ragen*, 340 U.S. 462 (1951); E.O. 12333 §§1.8(i), 1.5(h), 3.2; E.O. 12356; U.S. v. Snepp, 444 U.S. 507 (1980).

SOURCE: 56 FR 41459, Aug. 21, 1991, unless otherwise noted.

§ 1905.1 Scope and purpose.

This part sets forth the policy and procedures with respect to the production or disclosure of (a) material contained in the files of CIA, (b) information relating to or based upon material contained in the files of CIA, and (c) information acquired by any person while such person was an employee of CIA as part of the performance of that person's official duties or because of that person's association with CIA.

§ 1905.2 Definitions.

For the purpose of this part:

(a) *CIA* or *Agency* means the Central Intelligence Agency and includes all staff elements of the Director of Central Intelligence.

(b) *Demand* means any subpoena, order, or other legal summons (except garnishment orders) that is issued by a federal, state, or local governmental entity of competent jurisdiction with the authority to require a response on a particular matter, or a request for appearance of an individual where a demand could issue.

(c) *Employee* means any officer, any staff, contract, or other employee of CIA; any person including independent contractors associated with or acting on behalf of CIA; and any person formerly having such a relationship with CIA.

(d) *Production* or *produce* means the disclosure of:

(1) Any material contained in the files of CIA; or

(2) Any information relating to material contained in the files of CIA, including but not limited to summaries of such information or material, or opinions based on such information or material; or

(3) Any information acquired by persons while such persons were employees of CIA as a part of the performance of their official duties or because of their official status or association with CIA;

in response to a demand upon an employee of CIA.

(e) *General Counsel* includes the Deputy General Counsel or Acting General Counsel.

§ 1905.3 General.

(a) No employee shall produce any materials or information in response to a demand without prior authorization as set forth in this part. This part applies to former employees to the extent consistent with applicable nondisclosure agreements.

(b) This part is intended only to provide procedures for responding to demands for production of documents or information, and is not intended to, does not, and may not be relied upon to, create any right or benefit, substantive or procedural, enforceable by any party against the United States.

§ 1905.4 Procedure for production.

(a) Whenever a demand for production is made upon an employee, the employee shall immediately notify the Litigation Division, Office of General Counsel, Central Intelligence Agency, Washington, DC 20505 (703/874–3118), which shall follow the procedures set forth in this section.

(b) The General Counsel of CIA and Deputy Directors or Heads of Independent Offices with responsibility for the information sought in the demand, or their designees, shall determine whether any information or materials may properly be produced in response to the demand, except that the Office of General Counsel may assert any and all legal defenses and objections to the demand available to CIA prior to the start of any search for information responsive to the demand. CIA may, in its sole discretion, decline to begin any search for information responsive to the demand until a final and non-appealable disposition of any such defenses and objections raised by CIA has been made by the entity or person that issued the demand.

(c) CIA officials shall consider the following factors, among others, in reaching a decision:

(1) Whether production is appropriate in light of any relevant privilege;

(2) Whether production is appropriate under the applicable rules of discovery or the procedures governing the case or matter in which the demand arose; and

(3) Whether any of the following circumstances apply:

(i) Disclosure would violate a statute, including but not limited to the Privacy Act of 1974, as amended, 5 U.S.C. 552a;

(ii) Disclosure would be inconsistent with the statutory responsibility of the Director of Central Intelligence to protect intelligence sources and methods;

(iii) Disclosure would violate a specific CIA regulation or directive;

(iv) Disclosure would reveal classified information;

(v) Disclosure would improperly reveal trade secrets or proprietary confidential information without the owner's consent; or

(vi) Disclosure would unduly interfere with the orderly conduct of CIA's functions.

(d) If oral or written testimony is sought by a demand in a case or matter

in which the CIA is not a party, a reasonably detailed description of the testimony sought, in the form of an affidavit or, if that is not feasible, a written statement, by the party seeking the testimony or by the party's attorney must be furnished to the CIA Office of General Counsel.

(e) The Office of General Counsel shall be responsible for notifying the appropriate employees and other persons of all decisions regarding responses to demands and providing advice and counsel as to the implementation of such decisions.

(f) If response to a demand is required before a decision is made whether to provide the documents or information sought by the demand, an attorney from the Office of General Counsel, after consultation with the Department of Justice, shall appear before and furnish the court or other competent authority with a copy of this Regulation and state that the demand has been or is being, as the case may be, referred for the prompt consideration of the appropriate CIA officials, and shall respectfully request the court or other authority to stay the demand pending receipt of the requested instructions.

(g) If the court or other authority declines to stay the demand pending receipt of instructions in response to a request made in accordance with §1905.4(g), or rules that the demand must be complied with irrespective of instructions rendered in accordance with this part not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall, if so directed by the General Counsel of CIA, or designee, respectfully decline to comply with the demand under the authority of *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951), and this Regulation.

(h) With respect to any function granted to CIA officials in this part, such officials are authorized to delegate in writing their authority in any case or matter or category thereof to subordinate officials.

(i) Any nonemployee who receives a demand for the production or disclosure of CIA information acquired because of that person's association or contacts with CIA should notify CIA's Office of General Counsel, Litigation Division (703/874–3118) for guidance and assistance. In such cases the provisions of this regulation shall be applicable.

PART 1906—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE CENTRAL INTELLIGENCE AGENCY

Sec.

1906.101 Purpose.
1906.102 Application.
1906.103 Definitions.
1906.104–1906.109 [Reserved]
1906.110 Self-evaluation.
1906.111 Notice.
1906.112–1906.129 [Reserved]
1906.130 General prohibitions against discrimination.
1906.131–1906.139 [Reserved]
1906.140 Employment.
1906.141–1906.148 [Reserved]
1906.149 Program accessibility: Discrimination prohibited.
1906.150 Program accessibility: Existing facilities.
1906.151 Program accessibility: New construction and alterations.
1906.152–1906.159 [Reserved]
1906.160 Communications.
1906.161–1906.169 [Reserved]
1906.170 Compliance procedures.

AUTHORITY: 19 U.S.C. 794.

SOURCE: 57 FR 39610, Sept. 1, 1992, unless otherwise noted.

§1906.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§1906.102 Application.

This part applies to all programs or activities conducted by the Agency except for programs or activities conducted outside the United States that do not involve handicapped persons in the United States. This regulation will apply to the Agency only to the extent consistent with the National Security

Act of 1947 (50 U.S.C. 402 *et seq.*), as amended; the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a *et seq.*), as amended; and other applicable law.

§ 1906.103 Definitions.

For purposes of this part, the following terms means—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Agency. For example, auxiliary aids useful for persons with impaired vision include readers, materials in braille, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices. The Central Intelligence Agency may prohibit from any of its facilities any auxiliary aid, or category of auxiliary aid, that the Office of Security (OS) determines creates a security risk or potential security risk. OS reserves the right to examine any auxiliary aid brought into an Agency facility.

Complete complaint means a written statement that contains the complainant's name and address and describes the Agency's alleged discriminatory action in sufficient detail to inform the Agency of the nature and date of the alleged violation of section 504. It must be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties must describe or identify (by name, if possible) the alleged victims of discrimination.

Director means the Director of Central Intelligence or an official or employee of the Agency acting for the Director under a delegation of authority.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances or other real or personal property.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase—

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Cardiovascular; Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward the impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition

but is treated by the Agency as having such an impairment.

Qualified individual with handicaps means—

(1) With respect to any Agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Agency can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other Agency program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 1906.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–002, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by the Agency and not to federally assisted programs.

§§ 1906.104–1906.109 [Reserved]

§ 1906.110 Self-evaluation.

(a) The Agency shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effect thereof, that do not or may not meet the requirements of this part, and to the extent modification of any of those policies and practices is required, the Agency shall proceed to make the necessary modifications.

(b) The Agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Agency shall, for at least 3 years following completion of the self-evaluation, maintain on file, and make available for public inspection—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 1906.111 Notice.

The Agency shall make available, to employees, applicants, participants, beneficiaries, and other interested persons, such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Agency, and make that information available to them in such manner as the Director finds necessary to apprise those persons of the protections against discrimination assured them by section 504 and the regulations in this part.

§§ 1906.112–1906.129 [Reserved]

§ 1906.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under, any program or activity conducted by the Agency.

(b)(1) The Agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified individual with handicap the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Deny a qualified individual with handicaps an opportunity to obtain the same result, to gain the same benefit, to reach the same level of achievement as that provided to others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless that action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The Agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity conducted by the Agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The Agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The Agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the Agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis on handicap. However, the programs or activities of entities that are licensed or certified by the Agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits or a program limited by Federal statute or Executive Order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive Order to a different class of individuals with handicaps is not prohibited by this part.

(d) The Agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 1906.131–1906.139 [Reserved]

§ 1906.140 Employment.

No qualified individual with handicaps shall, solely on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1979 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 1906.141–1906.148 [Reserved]

§ 1906.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1906.150, no qualified individual with handicaps shall, because the Agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Agency.

§ 1906.150 Program accessibility: Existing facilities.

(a) *General.* The Agency shall operate each program or activity so that the program or activity, viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This program does not—

(1) Necessarily require the Agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2)(i) Require the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

(ii) The Agency has the burden of proving that compliance with § 1906.150(a) would result in that alteration or those burdens.

(iii) The decision that compliance would result in that alteration or those burdens must be made by the Director after considering all of the Agency's resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion.

(iv) If an action would result in that alteration or those burdens, the Agency shall take any other action that would not result in the alteration or burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* (1) The Agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps.

(2) The Agency is not required to make structural changes in existing facilities if other methods are effective in achieving compliance with this section.

(3) The Agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing that Act.

(4) In choosing among available methods for meeting the requirements of this section, the Agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The Agency shall comply with the obligations established under this section within 60 days of the effective date of this part except that if structural changes in facilities are undertaken, the changes shall be made within 3 years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* (1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Agency shall develop, within 6 months of the effective date of this part, a transition plan setting forth the steps necessary to complete those changes.

(2) The Agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan must be made available for public inspection.

(3) The plan must, at a minimum—

(i) Identify physical obstacles in the Agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the official responsible for implementation of the plan.

§ 1906.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of, the Agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4175), as established in 41 CFR 101–19.600 to 101–19–607, apply to buildings covered by this section.

§§ 1906.152–1906.159 [Reserved]

§ 1906.160 Communications.

(a) The Agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public as follows:

(1)(i) The Agency shall furnish appropriate auxiliary aids if necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Agency.

(ii) In determining what type of auxiliary aid is necessary, the Agency shall give primary consideration to the requests of the individual with handicaps.

(2) Where the Agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The Agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Agency has the burden of proving that compliance with § 1906.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Agency head or his or her designee after considering all Agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 1906.161–1906.169 [Reserved]

§ 1906.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the Agency.

(b) The Agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Office of Equal Employment Opportunity, is responsible for coordinating implementation of this section. Complaints may be sent to Central Intelligence Agency, Director, Office of Equal Employment Opportunity, Washington, DC 20505.

(d) The Agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180

days of the alleged act of discrimination. The Agency may extend this time period for good cause.

(e) If the Agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The Agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157) is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, The Agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the Agency of the letter required by §1906.170(g). The Agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Director.

(j) The Agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Agency determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Director may delegate the authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

PART 1907—CHALLENGES TO CLASSIFICATION OF DOCUMENTS BY AUTHORIZED HOLDERS PURSUANT TO §1.9 OF EXECUTIVE ORDER 12958

GENERAL

Sec.
1907.01 Authority and purpose.
1907.02 Definitions.
1907.03 Contact for general information and requests.
1907.04 Suggestions and complaints.

FILING OF CHALLENGES

1907.11 Prerequisites.
1907.12 Requirements as to form.
1907.13 Identification of material at issue.
1907.14 Transmission.

ACTION ON CHALLENGES

1907.21 Receipt, recording, and tasking.
1907.22 Challenges barred by res judicata.
1907.23 Response by originator(s) and/or any interested party.
1907.24 Designation of authority to hear challenges.
1907.25 Action on challenge.
1907.26 Notification of decision and prohibition on adverse action.

RIGHT OF APPEAL

1907.31 Right of appeal.

AUTHORITY: Executive Order 12958, 60 FR 19825, 3 CFR 1996 Comp., P. 333–356 (or successor orders).

SOURCE: 62 FR 32494, June 16, 1997, unless otherwise noted.

GENERAL

§1907.01 Authority and purpose.

(a) *Authority*. This part is issued under the authority of and in order to implement §1.9 of Executive Order (E.O.) 12958, sec. 102 of the National Security Act of 1947, and sec. 6 of the CIA Act of 1949.

(b) *Purpose*. This part prescribes procedures for authorized holders of information classified under the various provisions of E.O. 12958, or predecessor Orders, to seek a review or otherwise challenge the classified status of information to further the interests of the United States Government. This part and §1.9 of E.O. 12958 confer no rights upon members of the general public, or

authorized holders acting in their personal capacity, both of whom shall continue to request reviews of classification under the mandatory declassification review provisions set forth at § 3.6 of E.O. 12958.

§ 1907.02 Definitions.

For purposes of this part, the following terms have the meanings as indicated:

(a) *Agency* or *CIA* means the United States Central Intelligence Agency acting through the CIA Information and Privacy Coordinator;

(b) *Authorized holders* means any member of any United States executive department, military department, the Congress, or the judiciary (Article III) who holds a security clearance from or has been specifically authorized by the Central Intelligence Agency to possess and use on official business classified information, or otherwise has Constitutional authority pursuant to their office;

(c) *Ddays* means calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this CFR part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

(d) *Challenge* means a request in the individual's official, not personal, capacity and in furtherance of the interests of the United States;

(e) *Control* means ownership or the authority of the CIA pursuant to federal statute or privilege to regulate official or public access to records;

(f) *Coordinator* means the CIA Information and Privacy Coordinator acting in the capacity of Executive Secretary of the Agency Release Panel;

(g) *Information* means any knowledge that can be communicated or documentary material, regardless of its physical form, that is:

(1) Owned by, produced by or for, or under the control of the United States Government, and

(2) Lawfully and actually in the possession of an authorized holder and for which ownership and control has not been relinquished by the CIA;

(h) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue;

(i) *Originator* means the CIA officer who originated the information at issue, or successor in office, or a CIA officer who has been delegated declassification authority for the information at issue in accordance with the provisions of this Order;

(j) *This Order* means Executive Order 12958 of April 17, 1995 and published at 60 FR 19825–19843 (or successor Orders).

§ 1907.03 Contact for general information and requests.

For information on this part or to file a challenge under this part, please direct your inquiry to the Executive Secretary, Agency Release Panel, Central Intelligence Agency, Washington, DC 20505. The commercial (non-secure) telephone is (703) 613–1287; the classified (secure) telephone for voice and facsimile is (703) 613–3007.

§ 1907.04 Suggestions and complaints.

The Agency welcomes suggestions or complaints with regard to its administration of the Executive Order. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. The Agency will respond to all substantive communications and take such actions as determined feasible and appropriate.

FILING OF CHALLENGES

§ 1907.11 Prerequisites.

The Central Intelligence Agency has established liaison and procedures with many agencies for declassification issues. Prior to reliance on this Part, authorized holders are required to first exhaust such established administrative procedures for the review of classified information. Further information on these procedures is available from the point of contact, see 32 CFR 1907.03.

§ 1907.12 Requirements as to form.

The challenge shall include identification of the challenger by full name

and title of position, verification of security clearance or other basis of authority, and an identification of the documents or portions of documents or information at issue. The challenge shall also, in detailed and factual terms, identify and describe the reasons why it is believed that the information is not protected by one or more of the §1.5 provisions, that the release of the information would not cause damage to the national security, or that the information should be declassified due to the passage of time. The challenge must be properly classified; in this regard, until the challenge is decided, the authorized holder must treat the challenge, the information being challenged, and any related or explanatory information as classified at the same level as the current classification of the information in dispute.

§ 1907.13 Identification of material at issue.

Authorized holders shall append the documents at issue and clearly mark those portions subject to the challenge. If information not in documentary form is in issue, the challenge shall state so clearly and present or otherwise refer with specificity to that information in the body of the challenge.

§ 1907.14 Transmission.

Authorized holders must direct challenge requests to the CIA as specified in §1907.03. The classified nature of the challenge, as well as the appended documents, require that the holder transmit same in full accordance with established security procedures. In general, registered U.S. mail is approved for SECRET, non-compartmented material; higher classifications require use of approved Top Secret facsimile machines or CIA-approved couriers. Further information is available from the CIA as well as corporate or other federal agency security departments.

ACTION ON CHALLENGES

§ 1907.21 Receipt, recording, and tasking.

The Executive Secretary of the Agency Release Panel shall within ten (10) days record each challenge received under this Part, acknowledge receipt to the authorized holder, and task the originator and other interested parties. Additional taskings, as required during the review process, shall be accomplished within five (5) days of notification.

§ 1907.22 Challenges barred by res judicata.

The Executive Secretary of the Agency Release Panel shall respond on behalf of the Panel and deny any challenge where the information in question has been the subject of a classification review within the previous two (2) years or is the subject of pending litigation in the federal courts.

§ 1907.23 Response by originator(s) and/or any interested party.

(a) *In general.* The originator of the classified information (document) is a required party to any challenge; other interested parties may become involved through the request of the Executive Secretary or the originator when it is determined that some or all of the information is also within their official cognizance.

(b) *Determination.* These parties shall respond in writing to the Executive Secretary of the Agency Release Panel with a mandatory unclassified finding, to the greatest extent possible, and an optional classified addendum. This finding shall agree to a declassification or, in specific and factual terms, explain the basis for continued classification including identification of the category of information, the harm to national security which could be expected to result from disclosure, and, if older than ten (10) years, the basis for the extension of classification time under §§1.6 and 3.4 of this Order. These parties shall also provide a statement as to whether or not there is any other statutory, common law, or Constitutional basis for withholding as required by §6.1(c) of this Order.

(c) *Time.* The determination(s) shall be provided on a "first-in, first-out" basis with respect to all challenges pending under this section and shall be accomplished expeditiously taking into account the requirements of the authorized holder as well as the business requirements of the originator including their responsibilities under the

Freedom of Information Act, the Privacy Act, or the mandatory declassification review provisions of this Order.

§ 1907.24 Designation of authority to hear challenges.

The Deputy Director for Administration has designated the Agency Release Panel and the Historical Records Policy Board, established pursuant to 32 CFR 1900.41, as the Agency authority to hear and decide challenges under these regulations.

§ 1907.25 Action on challenge.

(a) *Action by Agency Release Panel.* The Executive Secretary shall place challenges ready for adjudication on the agenda at the next occurring meeting of the Agency Release Panel. The Executive Secretary shall provide a summation memorandum for consideration of the members; the complete package consisting of the challenge, the information at issue, and the findings of the originator and interested parties shall also be provided. The Agency Release Panel shall meet and decide challenges sitting as a committee of the whole. Decisions are by majority vote of those present at a meeting and shall be based on the written record and their deliberations; no personal appearances shall be permitted without the express permission of the Panel.

(b) *Action by Historical Records Policy Board.* In any cases of divided vote by the ARP, any member of that body is authorized to refer the request to the CIA Historical Records Policy Board which acts as the senior corporate board for the Agency. The record compiled (the request, the memoranda filed by the originator and interested parties, and the previous decision(s)) as well as any memorandum of law or policy the referent desires to be considered, shall be certified by the Executive Secretary of the Agency Release Panel and shall constitute the official record of the proceedings and must be included in any subsequent filings.

§ 1907.26 Notification of decision and prohibition on adverse action.

The Executive Secretary of the Agency Release Panel shall communicate the decision of the Agency to the authorized holder, the originator, and other interested parties within ten (10) days of the decision by the Panel or Board. That correspondence shall include a notice that no adverse action or retribution can be taken in regard to the challenge and that an appeal of the decision may be made to the Interagency Security Classification Appeals Panel (ISCAP) established pursuant to § 5.4 of this Order.

RIGHT OF APPEAL

§ 1907.31 Right of appeal.

A right of appeal is available to the ISCAP established pursuant to § 5.4 of this Order. Action by that body will be the subject of rules to be promulgated by the Information Security Oversight Office (ISOO).

PART 1908—PUBLIC REQUESTS FOR MANDATORY DECLASSIFICATION REVIEW OF CLASSIFIED INFORMATION PURSUANT TO § 3.6 OF EXECUTIVE ORDER 12958

GENERAL

Sec.
1908.01 Authority and purpose.
1908.02 Definitions.
1908.03 Contact for general information and requests.
1908.04 Suggestions and complaints.

FILING OF MANDATORY DECLASSIFICATION REVIEW (MDR) REQUESTS

1908.11 Preliminary information.
1908.12 Requirements as to form.
1908.13 Fees.

AGENCY ACTION ON MDR REQUESTS

1908.21 Receipt, recording, and tasking.
1908.22 Requests barred by res judicata.
1908.23 Determination by originator or interested party.
1908.24 Notification of decision and right of appeal.

AGENCY ACTION ON MDR APPEALS

1908.31 Requirements as to time and form.
1908.32 Receipt, recording, and tasking.
1908.33 Determination by Deputy Director(s).
1908.34 Establishment of appeals structure.
1908.35 Action by appeals authority.
1908.36 Notification of decision and right of further appeal.

FURTHER APPEALS

1908.41 Right of further appeal.

AUTHORITY: Executive Orders 12958, 60 FR 19825, 3 CFR 1996 Comp., p. 333–356 (or successor Orders).

SOURCE: 62 FR 32495, June 16, 1997, unless otherwise noted.

GENERAL

§ 1908.01 Authority and purpose.

(a) *Authority*. This part is issued under the authority of and in order to implement §3.6 of Executive Order (E.O.) 12958 (or successor Orders); the CIA Information Act of 1984 (50 U.S.C. 431); sec. 102 of the National Security Act of 1947, as amended (50 U.S.C. 403); and sec. 6 of the CIA Act of 1949, as amended (5 U.S.C. 403g).

(b) *Purpose*. This part prescribes procedures, subject to limitations set forth below, for members of the public to request a declassification review of information classified under the various provisions of this or predecessor Orders. Section 3.6 of E.O. 12958 and these regulations do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or employees.

§ 1908.02 Definitions.

For purposes of this part, the following terms have the meanings as indicated:

(a) *Agency* or *CIA* means the United States Central Intelligence Agency acting through the CIA Information and Privacy Coordinator;

(b) *Days* means calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

(c) *Control* means ownership or the authority of the CIA pursuant to Federal statute or privilege to regulate official or public access to records;

(d) *Coordinator* means the CIA Information and Privacy Coordinator who serves as the Agency manager of the information review and release program instituted under the mandatory declassification review provisions of Executive Order 12958;

(e) *Federal agency* means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

(f) *Information* means any knowledge that can be communicated or documentary material, regardless of its physical form that is owned by, produced by or for, or under the control of the United States Government; it does not include:

(1) Information within the scope of the CIA Information Act, or

(2) Information originated by the incumbent President, White House Staff, appointed committees, commissions or boards, or any entities within the Executive Office that solely advise and assist the incumbent President;

(g) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue;

(h) *NARA* means the National Archives and Records Administration;

(i) *Originator* means the CIA officer who originated the information at issue, or successor in office, or a CIA officer who has been delegated declassification authority for the information at issue in accordance with the provisions of this Order;

(j) *Presidential libraries* means the libraries or collection authorities established by statute to house the papers of former Presidents Hoover, Roosevelt, Truman, Eisenhower, Kennedy, Nixon, Ford, Carter, Reagan, Bush and similar institutions or authorities as may be established in the future;

(k) *Referral* means coordination with or transfer of action to an interested party;

(l) *This Order* means Executive Order 12958 of April 17, 1995 and published at 60 FR 19825–19843 (or successor Orders);

§ 1908.03 Contact for general information and requests.

For general information on this part or to request a declassification review, please direct your communication to

the Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC 20505. Such inquiries will also be accepted by facsimile at (703) 613–3007. For general or status information only, the telephone number is (703) 613–1287. Collect calls cannot be accepted.

§ 1908.04 Suggestions and complaints.

The Agency welcomes suggestions or complaints with regard to its administration of the mandatory declassification review program established under Executive Order 12958. Many requesters will receive pre-paid, customer satisfaction survey cards. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. The Agency will respond to all substantive communications and take such actions as determined feasible and appropriate.

FILING OF MANDATORY DECLASSIFICATION REVIEW (MDR) REQUESTS

§ 1908.11 Preliminary information.

Members of the public shall address all communications to the point of contact specified above and clearly delineate the communication as a request under this regulation. Requests and appeals on requests received from members of the public who owe outstanding fees for information services under this Order or the Freedom of Information Act at this or another federal agency will not be accepted until such debts are resolved.

§ 1908.12 Requirements as to form.

The request shall identify the document(s) or material(s) with sufficient specificity (e.g., National Archives and Records Administration (NARA) Document Accession Number or other applicable, unique document identifying number) to enable the Agency to locate it with reasonable effort. Broad or topical requests for records on a particular subject may not be accepted under this provision. A request for documents contained in the various Presidential libraries shall be effected through the staff of such institutions who shall forward the document(s) in question for Agency review. The requester shall also provide sufficient personal identifying information when required by the Agency to satisfy requirements of this part.

§ 1908.13 Fees.

Requests submitted via NARA or the various Presidential libraries shall be responsible for reproduction costs required by statute or regulation. Requests made directly to this Agency will be liable for costs in the same amount and under the same conditions as specified in 32 CFR part 1900.

AGENCY ACTION ON MDR REQUESTS

§ 1908.21 Receipt, recording, and tasking.

The Information and Privacy Coordinator shall within ten (10) days record each mandatory declassification review request received under this part, acknowledge receipt to the requester in writing (if received directly from a requester), and shall thereafter task the originator and other interested parties. Additional taskings, as required during the review process, shall be accomplished within ten (10) days of notification.

§ 1908.22 Requests barred by res judicata.

The Coordinator shall respond to the requester and deny any request where the information in question has been the subject of a classification review within the previous two (2) years or is the subject of pending litigation in the federal courts.

§ 1908.23 Determination by originator or interested party.

(a) *In general*. The originator of the classified information (document) is a required party to any mandatory declassification review request; other interested parties may become involved through a referral by the Coordinator when it is determined that some or all of the information is also within their official cognizance.

(b) *Required determinations*. These parties shall respond in writing to the Coordinator with a finding as to the classified status of the information including the category of protected information as set forth in §1.5 of this Order, and, if older than ten (10) years, the

basis for the extension of classification time under §§1.6 and 3.4 of this Order. These parties shall also provide a statement as to whether or not there is any other statutory, common law, or Constitutional basis for withholding as required by §6.1(c) of this Order.

(c) *Time*. This response shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the originator or interested parties and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act.

§1908.24 Notification of decision and right of appeal.

The Coordinator shall communicate the decision of the Agency to the requester within ten (10) days of completion of all review action. That correspondence shall include a notice of a right of administrative appeal to the Agency Release Panel pursuant to §3.6(d) of this Order.

AGENCY ACTION ON MDR APPEALS

§1908.31 Requirements as to time and form.

Appeals of decisions must be received by the Coordinator within forty-five (45) days of the date of mailing of the Agency's initial decision. It shall identify with specificity the documents or information to be considered on appeal and it may, but need not, provide a factual or legal basis for the appeal.

§1908.32 Receipt, recording, and tasking.

The Coordinator shall promptly record each appeal received under this part, acknowledge receipt to the requester, and task the originator and other interested parties. Additional taskings, as required during the review process, shall be accomplished within ten (10) days of notification.

§1908.33 Determination by Deputy Director(s).

Each Deputy Director in charge of a directorate which originated or has an interest in any of the records subject to the appeal, or designee, is a required party to any appeal; other interested parties may become involved through the request of the Coordinator when it is determined that some or all of the information is also within their official cognizance. These parties shall respond in writing to the Coordinator with a finding as to the classified status of the information including the category of protected information as set forth in §1.5 of this Order, and, if older than ten (10) years, the basis for continued classification under §§1.6 and 3.4 of this Order. These parties shall also provide a statement as to whether or not there is any other statutory, common law, or Constitutional basis for withholding as required by §6.1(c) of this Order. This response shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the parties and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act.

§1908.34 Establishment of appeals structure.

(a) *In general*. Two administrative entities have been established by the Director of Central Intelligence to facilitate the processing of administrative appeals under the mandatory declassification review provisions of this Order. Their membership, authority, and rules of procedure are as follows.

(b) *Historical Records Policy Board ("HRPB" or "Board")*. This Board, the successor to the CIA Information Review Committee, acts as the senior corporate board in the CIA on all matters of information review and release. It is composed of the Executive Director, who serves as its Chair, the Deputy Director for Administration, the Deputy Director for Intelligence, the Deputy Director for Operations, the Deputy Director for Science and Technology, the General Counsel, the Director of Congressional Affairs, the Director of the Public Affairs Staff, the Director, Center for the Study of Intelligence, and the Associate Deputy Director for Administration/Information Services, or their designees. The Board, by majority vote, may delegate to one or more of its members the authority to act on

any appeal or other matter or authorize the Chair to delegate such authority, as long as such delegation is not to the same individual or body who made the initial denial. The Executive Secretary of the HRPB is the Director, Information Management. The Chair may request interested parties to participate when special equities or expertise are involved.

(c) *Agency Release Panel ("ARP" or "Panel").* The HRPB, pursuant to its delegation of authority, has established a subordinate Agency Release Panel. This Panel is composed of the Director, Information Management, who serves as its Chair; the Information Review Officers from the Directorates of Administration, Intelligence, Operations, Science and Technology, and the Director of Central Intelligence Area; the CIA Information and Privacy Coordinator; the Chief, Historical Review Group; the Chair, Publications Review Board; the Chief, Records Declassification Program; and representatives from the Offices of General Counsel and Congressional Affairs, and the Public Affairs Staff. The Information and Privacy Coordinator also serves as the Executive Secretary of the Panel. The Panel advises and assists the HRPB on all information release issues, monitors the adequacy and timeliness of Agency releases, sets component search and review priorities, reviews adequacy of resources available to and planning for all Agency release programs, and performs such other functions as deemed necessary by the Board. The Chair may request interested parties to participate when special equities or expertise are involved. The Panel, functioning as a committee of the whole or through individual members, will make final Agency decisions from appeals of initial denial decisions under E.O. 12958. Issues not resolved by the Panel will be referred by the Panel to the HRPB. Matters decided by the Panel or Board will be deemed a final decision by the Agency.

§ 1908.35 Action by appeals authority.

(a) *Action by Agency Release Panel.* The Coordinator, in his or her capacity as Executive Secretary of the Agency Release Panel, shall place appeals of mandatory declassification review requests ready for adjudication on the agenda at the next occurring meeting of the Agency Release Panel. The Executive Secretary shall provide a summation memorandum for consideration of the members, the complete record of the request consisting of the request, the document(s) (sanitized and full text) at issue, and the findings of the originator and interested parties. The Panel shall meet and decide requests sitting as a committee of the whole. Decisions are by majority vote of those present at a meeting and shall be based on the written record and their deliberations; no personal appearances shall be permitted without the express permission of the Panel.

(b) *Action by Historical Records Policy Board.* In any cases of divided vote by the ARP, any member of that body is authorized to refer the request to the CIA Historical Records Policy Board which acts as the senior corporate board for the Agency. The record compiled (the request, the memoranda filed by the originator and interested parties, and the previous decision(s)) as well as any memorandum of law or policy the referent desires to be considered, shall be certified by the Executive Secretary of the Agency Release Panel and shall constitute the official record of the proceedings and must be included in any subsequent filings.

§ 1908.36 Notification of decision and right of further appeal.

The Coordinator shall communicate the decision of the Panel or Board to the requester, NARA, or the particular Presidential Library within ten (10) days of such decision. That correspondence shall include a notice that an appeal of the decision may be made to the Interagency Security Classification Appeals Panel (ISCAP) established pursuant to § 5.4 of this Order.

FURTHER APPEALS

§ 1908.41 Right of further appeal.

A right of further appeal is available to the ISCAP established pursuant to § 5.4 of this Order. Action by that Panel will be the subject of rules to be promulgated by the Information Security Oversight Office (ISOO).

PART 1909—ACCESS BY HISTORICAL RESEARCHERS AND FORMER PRESIDENTIAL APPOINTEES PURSUANT TO § 4.5 OF EXECUTIVE ORDER 12958

GENERAL

Sec.
1909.01 Authority and purpose.
1909.02 Definitions.
1909.03 Contact for general information and requests.
1909.04 Suggestions and complaints.

REQUESTS FOR HISTORICAL ACCESS

1909.11 Requirements as to who may apply.
1909.12 Designations of authority to hear requests.
1909.13 Receipt, recording, and tasking.
1909.14 Determinations by tasked officials.
1909.15 Action by hearing authority.
1909.16 Action by appeal authority.
1909.17 Notification of decision.
1909.18 Termination of access.

AUTHORITY: Executive Order 12958, 60 FR 19825. 3 CFR 1996 Comp., p. 333–356 (or successor Orders).

SOURCE: 62 FR 32498, June 16, 1997, unless otherwise noted.

GENERAL

§ 1909.01 Authority and purpose.

(a) AUTHORITY. This part is issued under the authority of and in order to implement § 4.5 of Executive Order 12958 (or successor Orders); the CIA Information Act of 1984 (50 U.S.C. 431); sec. 102 of the National Security Act of 1947, as amended (50 U.S.C. 403); and sec. 6 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403g).

(b) *Purpose*. (1) This part prescribes procedures for:

(i) Requesting access to CIA records for purposes of historical research, or

(ii) Requesting access to CIA records as a former Presidential appointee.

(2) Section 4.5 of Executive Order 12958 and these regulations do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or employees.

§ 1909.02 Definitions.

For purposes of this part, the following terms have the meanings indicated:

(a) *Agency* or *CIA* means the United States Central Intelligence Agency acting through the CIA Information and Privacy Coordinator;

(b) *Agency Release Panel* or *Panel* or *ARP* means the CIA Agency Release Panel established pursuant to 32 CFR 1900.41;

(c) *Days* means calendar days when the Agency is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

(d) *Control* means ownership or the authority of the CIA pursuant to federal statute or privilege to regulate official or public access to records;

(e) *Coordinator* means the CIA Information and Privacy Coordinator who serves as the Agency manager of the historical access program established pursuant to § 4.5 of this Order;

(f) *Director, Center for the Study of Intelligence* or "D/CSI" means the Agency official responsible for the management of the CIA's various historical programs including the management of access granted under this section;

(g) *Director of Personnel Security* means the Agency official responsible for making all security and access approvals and for effecting the necessary non-disclosure and/or pre-publication agreements as may be required;

(h) *Federal agency* means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

(i) *Former Presidential appointee* means any person who has previously occupied a policy-making position in the executive branch of the United States Government to which they were appointed by the current or former President and confirmed by the United States Senate;

(j) *Historian* or *historical researcher* means any individual with professional training in the academic field of history (or related fields such as journalism) engaged in a research project leading to publication (or any similar

activity such as academic course development) reasonably intended to increase the understanding of the American public into the operations and activities of the United States government;

(k) *Information* means any knowledge that can be communicated or documentary material, regardless of its physical form that is owned by, produced by or for, or is under the control of the United States Government;

(l) *Interested party* means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of the CIA, has a subject matter or physical interest in the documents or information at issue;

(m) *Originator* means the CIA officer who originated the information at issue, or successor in office, or a CIA officer who has been delegated declassification authority for the information at issue in accordance with the provisions of this Order;

(n) *This Order* means Executive Order 12958 of April 17 1995 and published at 60 FR 19825-19843 (or successor Orders).

§ 1909.03 Contact for general information and requests.

For general information on this Part, to inquire about historical access to CIA records, or to make a formal request for such access, please direct your communication in writing to the Information and Privacy Coordinator, Central Intelligence Agency, Washington, DC. 20505. Inquiries will also be accepted by facsimile at (703) 613–3007. For general information only, the telephone number is (703) 613–1287. Collect calls cannot be accepted.

§ 1909.04 Suggestions and complaints.

The Agency welcomes suggestions or complaints with regard to its administration of the historical access program established pursuant to Executive Order 12958. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. The Agency will respond to all substantive communications and take such actions as determined feasible and appropriate.

REQUESTS FOR HISTORICAL ACCESS

§ 1909.11 Requirements as to who may apply.

(a) *Historical researchers*—(1) *In general.* Any historian engaged in a historical research project as defined above may submit a request in writing to the Coordinator to be given access to classified information for purposes of that research. Any such request shall indicate the nature, purpose, and scope of the research project.

(2) *Additional considerations.* In light of the very limited resources for the Agency's various historical programs, it is the policy of the Agency to consider applications for historical research privileges only in those instances where the researcher's needs cannot be satisfied through requests for access to reasonably described records under the Freedom of Information Act or the mandatory declassification review provisions of Executive Order 12958 *and* where issues of internal resource availability and fairness to all members of the historical research community militate in favor of a particular grant.

(b) *Former Presidential appointees.* Any former Presidential appointee as defined herein may also submit a request to be given access to any classified records which they originated, reviewed, signed, or received while serving in that capacity. Such appointees may also request approval for a research associate but there is no entitlement to such enlargement of access and the decision in this regard shall be in the sole discretion of the Agency. Requests from appointees shall be in writing to the Coordinator and shall identify the records of interest.

§ 1909.12 Designations of authority to hear requests.

The Deputy Director for Administration has designated the Coordinator, the Agency Release Panel, and the Historical Records Policy Board, established pursuant to 32 CFR 1900.41, as the Agency authorities to decide requests for historical and former Presidential appointee access under Executive Order 12958 (or successor Orders) and these regulations.

§ 1909.13 Receipt, recording, and tasking.

The Information and Privacy Coordinator shall within ten (10) days record each request for historical access received under this Part, acknowledge receipt to the requester in writing and take the following action:

(a) *Compliance with general requirements.* The Coordinator shall review each request under this part and determine whether it meets the general requirements as set forth in 32 CFR 1909.11; if it does not, the Coordinator shall so notify the requester and explain the legal basis for this decision.

(b) *Action on requests meeting general requirements.* For requests which meet the requirements of 32 CFR 1909.11, the Coordinator shall thereafter task the D/CSI, the originator(s) of the materials for which access is sought, and other interested parties. Additional taskings, as required during the review process, shall be accomplished within ten (10) days of notification.

§ 1909.14 Determinations by tasked officials.

(a) *Required determinations.* The tasked parties as specified below shall respond in writing to the Coordinator with recommended findings to the following issues:

(1) That a serious professional or scholarly research project by the requester is contemplated (by D/CSI);

(2) That such access is clearly consistent with the interests of national security (by originator and interested party, if any);

(3) That a non-disclosure agreement has been or will be executed by the requester (or research associate, if any) and other appropriate steps have been taken to assure that classified information will not be disclosed or otherwise compromised (by Director of Personnel Security and representative of the Office of General Counsel);

(4) That a pre-publication agreement has been or will be executed by the requester (or research associate, if any) which provides for a review of notes and any resulting manuscript (by Director of Personnel Security and representative of the Office of General Counsel);

(5) That the information requested is reasonably accessible and can be located and compiled with a reasonable effort (by D/CSI and originator);

(6) That it is reasonably expected that substantial and substantive government documents and/or information will be amenable to declassification and release and/or publication (by D/CSI and originator);

(7) That sufficient resources are available for the administrative support of the researcher given current mission requirements (by D/CSI and originator); and,

(8) That the request cannot be satisfied to the same extent through requests for access to reasonably described records under the Freedom of Information Act or the mandatory declassification review provisions of Executive Order 12958 (by Coordinator, D/CSI and originator).

(b) *Time.* These responses shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the tasked offices and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act. The Agency will utilize its best efforts to complete action on requests under this part within thirty (30) days of date of receipt.

§ 1909.15 Action by hearing authority.

Action by Agency Release Panel. The Coordinator, in his or her capacity as Executive Secretary of the Agency Release Panel, shall place historical access requests ready for adjudication on the agenda at the next occurring meeting of the Agency Release Panel. The Executive Secretary shall provide a summation memorandum for consideration of the members, the complete record of the request consisting of the request and the findings of the tasked parties. The Panel shall meet and decide requests sitting as a committee of the whole on the basis of the eight factors enumerated at 32 CFR 1909.14(a). Decisions are by majority vote of those present at a meeting and shall be based on the written record and their deliberations; no personal appearances shall be permitted without the express permission of the Panel.

§ 1909.16 Action by appeal authority.

In any cases of divided vote by the ARP, any member of that body is authorized to refer the request to the CIA Historical Records Policy Board which acts as the senior corporate board for the Agency. The record compiled (the request, the memoranda filed by the originator and interested parties, and the previous decision(s)) as well as any memorandum of law or policy the referent desires to be considered, shall be certified by the Executive Secretary of the Agency Release Panel and shall constitute the official record of the proceedings and must be included in any subsequent filings. In such cases, the factors to be determined as specified in 32 CFR 1909.14(a) will be considered by the Board de novo and that decision shall be final.

§ 1909.17 Notification of decision.

The Coordinator shall inform the requester of the decision of the Agency Release Panel or the Historical Records Policy Board within ten (10) days of the decision and, if favorable, shall manage the access for such period as deemed required but in no event for more than two (2) years unless renewed by the Panel or Board in accordance with the requirements of 32 CFR 1909.14(a).

§ 1909.18 Termination of access.

The Coordinator shall cancel any authorization whenever the Director of Personnel Security cancels the security clearance of a requester (or research associate, if any) or whenever the Agency Release Panel determines that continued access would not be in compliance with one or more of the requirements of 32 CFR 1909.14(a).

PART 1910—DEBARMENT AND SUSPENSION PROCEDURES

Sec.
1910.1 General.

AUTHORITY: 50 U.S.C. 401–442; 50 U.S.C. 403a–403u; 48 CFR ch. 1, subpart 9.4.

§ 1910.1 General.

The Central Intelligence Agency (CIA), in accordance with its authorities under the Central Intelligence Agency Act of 1949, as amended, and the National Security Act of 1947, as amended, has an established debarment and suspension process in accordance with subpart 9.402(d) of the Federal Acquisition Regulation (FAR). This process and the causes for debarment and suspension are consistent with those found in FAR 9.406 and 9.407. The rights of CIA contractors in all matters involving debarment and suspension are hereby governed by the provisions of subpart 9.4 of the FAR.

[69 FR 63064, Oct. 29, 2004]

CHAPTER XX—INFORMATION SECURITY OVERSIGHT OFFICE, NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Part		*Page*
2000	Administrative procedures [Reserved]	
2001	Classified national security information	499
2003	[Reserved]	543
2004	National Industrial Security Program Directive No. 1	549

PART 2000—ADMINISTRATIVE PROCEDURES [RESERVED]

PART 2001—CLASSIFIED NATIONAL SECURITY INFORMATION

Subpart A—Scope of Part

Sec.
2001.1 Purpose and scope.

Subpart B—Classification

2001.10 Classification standards.
2001.11 Original classification authority.
2001.12 Duration of classification.
2001.13 Classification prohibitions and limitations.
2001.14 Classification challenges.
2001.15 Classification guides.
2001.16 Fundamental classification guidance review.

Subpart C—Identification and Markings

2001.20 General.
2001.21 Original classification.
2001.22 Derivative classification.
2001.23 Classification marking in the electronic environment.
2001.24 Additional requirements.
2001.25 Declassification markings.
2001.26 Automatic declassification exemption markings.

Subpart D—Declassification

2001.30 Automatic declassification.
2001.31 Systematic declassification review.
2001.32 Declassification guides.
2001.33 Mandatory review for declassification.
2001.34 Referrals.
2001.35 Discretionary declassification.
2001.36 Classified information in the custody of private organizations or individuals.
2001.37 Assistance to the Department of State.

Subpart E—Safeguarding

2001.40 General.
2001.41 Responsibilities of holders.
2001.42 Standards for security equipment.
2001.43 Storage.
2001.44 Reciprocity of use and inspection of facilities.
2001.45 Information controls.
2001.46 Transmission.
2001.47 Destruction.
2001.48 Loss, possible compromise, or unauthorized disclosure.
2001.49 Special access programs.
2001.50 Telecommunications, automated information systems, and network security.
2001.51 Technical security.
2001.52 Emergency authority.
2001.53 Open storage areas.
2001.54 Foreign government information.
2001.55 Foreign disclosure of classified information.

Subpart F—Self-Inspections

2001.60 General.

Subpart G—Security Education and Training

2001.70 General.
2001.71 Coverage.

Subpart H—Standard Forms

2001.80 Prescribed standard forms.

Subpart I—Reporting and Definitions

2001.90 Agency annual reporting requirements.
2001.91 Other agency reporting requirements.
2001.92 Definitions.

AUTHORITY: Sections 5.1(a) and (b), E.O. 13526, (75 FR 707, January 5, 2010).

SOURCE: 75 FR 37254, June 28, 2010, unless otherwise noted.

Subpart A—Scope of Part

§ 2001.1 Purpose and scope.

(a) This part is issued under Executive Order. (E.O.) 13526, *Classified National Security Information* (the Order). Section 5 of the Order provides that the Director of the Information Security Oversight Office (ISOO) shall develop and issue such directives as are necessary to implement the Order.

(b) The Order provides that these directives are binding on agencies. Section 6.1(a) of the Order defines "agency" to mean any "Executive agency" as defined in 5 U.S.C. 105; any "Military department" as defined in 5 U.S.C. 102; and any other entity within the executive branch that comes into the possession of classified information.

(c) For the convenience of the user, the following table provides references between the sections contained in this part and the relevant sections of the Order.

CFR section	Related section of E.O. 13526
2001.10 Classification standards	1.1, 1.4
2001.11 Original classification authority	1.3
2001.12 Duration of classification	1.5
2001.13 Classification prohibitions and limitations	1.7
2001.14 Classification challenges	1.8
2001.15 Classification guides	2.2
2001.16 Fundamental classification guidance review	1.9
2001.20 General	1.6
2001.21 Original classification	1.6(a)
2001.22 Derivative classification	2.1
2001.23 Classification marking in the electronic environment	1.6
2001.24 Additional requirements	1.6
2001.25 Declassification markings	1.5, 1.6, 3.3
2001.26 Automatic declassification exemption markings	3.3
2001.30 Automatic declassification	3.3, 3.7
2001.31 Systematic declassification review	3.4
2001.32 Declassification guides	3.3, 3.7
2001.33 Mandatory review for declassification	3.5, 3.6
2001.34 Referrals	3.3, 3.6, 3.7
2001.35 Discretionary declassification	3.1
2001.36 Classified information in the custody of private organizations or individuals.	none
2001.37 Assistance to the Department of State	none
2001.40 General	4.1
2001.41 Responsibilities of holders	4.1
2001.42 Standards for security equipment	4.1
2001.43 Storage	4.1
2001.44 Reciprocity of use and inspection of facilities	4.1
2001.45 Information controls	4.1, 4.2
2001.46 Transmission	4.1, 4.2
2001.47 Destruction	4.1, 4.2
2001.48 Loss, possible compromise, or unauthorized disclosure.	4.1, 4.2
2001.49 Special access programs	4.3
2001.50 Telecommunications, automated information systems, and network security.	4.1, 4.2
2001.51 Technical security	4.1
2001.52 Emergency authority	4.2
2001.53 Open storage areas	4.1
2001.54 Foreign government information	4.1
2001.55 Foreign disclosure of classified information	4.1(i)(2)
2001.60 Self-Inspections, General	5.4
2001.70 Security Education and Training, General	5.4
2001.71 Coverage	1.3(d), 2.1(d), 3.7(b), 4.1(b), 5.4(d)(3)
2001.80 Prescribed standard forms	5.2(b)(7)
2001.90 Agency annual reporting requirements	1.3(c), 5.2(b)(4), 5.4(d)(4), 5.4(d)(8)
2001.91 Other agency reporting requirements	1.3(d), 1.7(c)(3), 1.9(d), 2.1(d), 5.5
2001.92 Definitions	6.1

Subpart B—Classification

§ 2001.10 Classification standards.

Identifying or describing damage to the national security. Section 1.1(a) of the Order specifies the conditions that must be met when making classification decisions. Section 1.4 specifies that information shall not be considered for classification unless its unauthorized disclosure could reasonably be expected to cause identifiable or describable damage to the national security. There is no requirement, at the time of the decision, for the original classification authority to prepare a written description of such damage. However, the original classification authority must be able to support the decision in writing, including identifying or describing the damage, should the classification decision become the subject of a challenge or access demand pursuant to the Order or law.

§ 2001.11 Original classification authority.

(a) *General*. Agencies shall establish a training program for original classifiers in accordance with subpart G of this part.

(b) *Requests for original classification authority*. Agencies not possessing such authority shall forward requests to the

Director of ISOO. The agency head must make the request and shall provide a specific justification of the need for this authority. The Director of ISOO shall forward the request, along with the Director's recommendation, to the President through the National Security Advisor within 30 days. Agencies wishing to increase their assigned level of original classification authority shall forward requests in accordance with the procedures of this paragraph.

(c) *Reporting delegations of original classification authority*. All delegations of original classification authority shall be reported to the Director of ISOO. This can be accomplished by an initial submission followed by updates on a frequency determined by the senior agency official, but at least annually.

§ 2001.12 Duration of classification.

(a) *Determining duration of classification for information originally classified under the Order*—(1) *Establishing duration of classification*. Except for information that should clearly and demonstrably be expected to reveal the identity of a confidential human source or a human intelligence source or key design concepts of weapons of mass destruction, an original classification authority shall follow the sequence listed in paragraphs (a)(1)(i), (ii), and (iii) of this section when determining the duration of classification for information originally classified under this Order.

(i) The original classification authority shall attempt to determine a date or event that is less than 10 years from the date of original classification and which coincides with the lapse of the information's national security sensitivity, and shall assign such date or event as the declassification instruction.

(ii) If unable to determine a date or event of less than 10 years, the original classification authority shall ordinarily assign a declassification date that is 10 years from the date of the original classification decision.

(iii) If unable to determine a date or event of 10 years, the original classification authority shall assign a declassification date not to exceed 25 years from the date of the original classification decision.

(2) *Duration of classification of special categories of information*. The only exceptions to the sequence in paragraph (a)(1) of this section are as follows:

(i) If an original classification authority is classifying information that should clearly and demonstrably be expected to reveal the identity of a confidential human source or a human intelligence source, the duration shall be up to 75 years and shall be designated with the following marking, "50X1–HUM;" or

(ii) If an original classification authority is classifying information that should clearly and demonstrably be expected to reveal key design concepts of weapons of mass destruction, the duration shall be up to 75 years and shall be designated with the following marking, "50X2–WMD."

(b) *Extending duration of classification for information classified under the Order*. Extensions of classification are not automatic. If an original classification authority with jurisdiction over the information does not extend the classification of information assigned a date or event for declassification, the information is automatically declassified upon the occurrence of the date or event.

(1) If the date or event assigned by the original classification authority has not passed, an original classification authority with jurisdiction over the information may extend the classification duration of such information for a period not to exceed 25 years from the date of origin of the record.

(2) If the date or event assigned by the original classification authority has passed, an original classification authority with jurisdiction over the information may reclassify the information in accordance with the Order and this Directive only if it meets the standards for classification under sections 1.1 and 1.5 of the Order as well as section 3.3 of the Order, if appropriate.

(3) In all cases, when extending the duration of classification, the original classification authority must:

(i) Be an original classification authority with jurisdiction over the information;

(ii) Ensure that the information continues to meet the standards for classification under the Order; and

(iii) Make reasonable attempts to notify all known holders of the information.

(c) *Duration of information classified under prior orders*—(1) *Specific date or event*. Unless declassified earlier, information marked with a specific date or event for declassification under a prior order is automatically declassified upon that date or event. If the specific date or event has not passed, an original classification authority with jurisdiction over the information may extend the duration in accordance with the requirements of paragraph (b) of this section. If the date or event assigned by the original classification authority has passed, an original classification authority with jurisdiction over the information may only reclassify information in accordance with the standards and procedures under the Order and this Directive. If the information is contained in records determined to be permanently valuable, and the prescribed date or event will take place more than 25 years from the date of origin of the document, the declassification of the information will instead be subject to section 3.3 of the Order.

(2) *Indefinite duration of classification*. For information marked with X1, X2, X3, X4, X5, X6, X7, or X8; "Originating Agency's Determination Required" or its acronym "OADR," "Manual Review" or its acronym "MR;" "DCI Only;" "DNI Only;" and any other marking indicating an indefinite duration of classification under a prior order; or in those cases where a document is missing a required declassification instruction or the instruction is not complete:

(i) A declassification authority, as defined in section 3.1(b) of the Order, may declassify it;

(ii) An original classification authority with jurisdiction over the information may re-mark the information to establish a duration of classification of no more than 25 years from the date of origin of the document, consistent with the requirements for information originally classified under the Order, as provided in paragraph (a) of this section; or

(iii) Unless declassified earlier, such information contained in records determined to be permanently valuable shall remain classified for 25 years from the date of its origin, at which time it will be subject to section 3.3 of the Order.

(3) *Release of imagery acquired by space-based intelligence reconnaissance systems*. The duration of classification of imagery as defined in E.O. 12951, *Release of Imagery Acquired by Space-Based Intelligence Reconnaissance Systems*, that is otherwise marked with an indefinite duration, such as "DCI Only" or "DNI Only," shall be established by the Director of National Intelligence in accordance with E.O. 12951 and consistent with E.O. 13526. Any such information shall be remarked in accordance with instructions prescribed by the Director of National Intelligence.

§ 2001.13 Classification prohibitions and limitations.

(a) *Declassification without proper authority*. Classified information that has been declassified without proper authority, as determined by an original classification authority with jurisdiction over the information, remains classified and administrative action shall be taken to restore markings and controls, as appropriate. All such determinations shall be reported to the senior agency official who shall promptly provide a written report to the Director of ISOO.

(1) If the information at issue is in records in the physical and legal custody of the National Archives and Records Administration (NARA) and has been made available to the public, the original classification authority with jurisdiction over the information shall, as part of determining whether the restoration of markings and controls is appropriate, consider whether the removal of the information from public purview will significantly mitigate the harm to national security or otherwise draw undue attention to the information at issue. Written notification, classified when appropriate under the Order, shall be made to the Archivist, which shall include a description of the record(s) at issue, the elements of information that are classified, the

duration of classification, and the specific authority for continued classification. If the information at issue is more than 25 years of age and the Archivist does not agree with the decision, the information shall nonetheless be temporarily withdrawn from public access and shall be referred to the Director of ISOO for resolution in collaboration with affected parties.

(b) *Reclassification after declassification and release to the public under proper authority*. In making the decision to reclassify information that has been declassified and released to the public under proper authority, the agency head must approve, in writing, a determination on a document-by-document basis that the reclassification is required to prevent significant and demonstrable damage to the national security. As part of making such a determination, the following shall apply:

(1) The information must be reasonably recoverable without bringing undue attention to the information which means that:

(i) Most individual recipients or holders are known and can be contacted and all instances of the information to be reclassified will not be more widely disseminated;

(ii) If the information has been made available to the public via a means such as Government archives or reading room, consideration is given to length of time the record has been available to the public, the extent to which the record has been accessed for research, and the extent to which the record and/or classified information at issue has been copied, referenced, or publicized; and

(iii) If the information has been made available to the public via electronic means such as the internet, consideration is given as to the number of times the information was accessed, the form of access, and whether the information at issue has been copied, referenced, or publicized.

(2) If the reclassification concerns a record in the physical custody of NARA and has been available for public use, reclassification requires notification to the Archivist and approval by the Director of ISOO.

(3) Any recipients or holders of the reclassified information who have current security clearances shall be appropriately briefed about their continuing legal obligations and responsibilities to protect this information from unauthorized disclosure. The recipients or holders who do not have security clearances shall, to the extent practicable, be appropriately briefed about the reclassification of the information that they have had access to, their obligation not to disclose the information, and be requested to sign an acknowledgement of this briefing.

(4) The reclassified information must be appropriately marked in accordance with section 2001.24(l) and safeguarded. The markings should include the authority for and the date of the reclassification action.

(5) Once the reclassification action has occurred, it must be reported to the National Security Advisor and to the Director of ISOO by the agency head or senior agency official within 30 days. The notification must include details concerning paragraphs (b)(1) and (3) of this section.

(c) *Classification by compilation*. A determination that information is classified through the compilation of unclassified information is a derivative classification action based upon existing original classification guidance. If the compilation of unclassified information reveals a new aspect of information that meets the criteria for classification, it shall be referred to an original classification authority with jurisdiction over the information to make an original classification decision.

§ 2001.14 Classification challenges.

(a) *Challenging classification*. Authorized holders, including authorized holders outside the classifying agency, who want to challenge the classification status of information shall present such challenges to an original classification authority with jurisdiction over the information. An authorized holder is any individual who has been granted access to specific classified information in accordance with the provisions of the Order to include the special conditions set forth in section 4.1(h) of the Order. A formal challenge under this provision must be in writing, but need not be any more specific than to question why information is or

is not classified, or is classified at a certain level.

(b) *Agency procedures.* (1) Because the Order encourages authorized holders to challenge classification as a means for promoting proper and thoughtful classification actions, agencies shall ensure that no retribution is taken against any authorized holders bringing such a challenge in good faith.

(2) Agencies shall establish a system for processing, tracking and recording formal classification challenges made by authorized holders. Agencies shall consider classification challenges separately from Freedom of Information Act or other access requests, and shall not process such challenges in turn with pending access requests.

(3) The agency shall provide an initial written response to a challenge within 60 days. If the agency is unable to respond to the challenge within 60 days, the agency must acknowledge the challenge in writing, and provide a date by which the agency will respond. The acknowledgment must include a statement that if no agency response is received within 120 days, the challenger has the right to forward the challenge to the Interagency Security Classification Appeals Panel (Panel) for a decision. The challenger may also forward the challenge to the Panel if an agency has not responded to an internal appeal within 90 days of the agency's receipt of the appeal. Agency responses to those challenges it denies shall include the challenger's appeal rights to the Panel.

(4) Whenever an agency receives a classification challenge to information that has been the subject of a challenge within the past two years, or that is the subject of pending litigation, the agency is not required to process the challenge beyond informing the challenger of this fact and of the challenger's appeal rights, if any.

(c) *Additional considerations.* (1) Challengers and agencies shall attempt to keep all challenges, appeals and responses unclassified. However, classified information contained in a challenge, an agency response, or an appeal shall be handled and protected in accordance with the Order and this Directive. Information being challenged for classification shall remain classified unless and until a final decision is made to declassify it.

(2) The classification challenge provision is not intended to prevent an authorized holder from informally questioning the classification status of particular information. Such informal inquiries should be encouraged as a means of holding down the number of formal challenges and to ensure the integrity of the classification process.

§ 2001.15 Classification guides.

(a) *Preparation of classification guides.* Originators of classification guides are encouraged to consult users of guides for input when developing or updating guides. When possible, originators of classification guides are encouraged to communicate within their agencies and with other agencies that are developing guidelines for similar activities to ensure the consistency and uniformity of classification decisions. Each agency shall maintain a list of its classification guides in use.

(b) *General content of classification guides.* Classification guides shall, at a minimum:

(1) Identify the subject matter of the classification guide;

(2) Identify the original classification authority by name and position, or personal identifier;

(3) Identify an agency point-of-contact or points-of-contact for questions regarding the classification guide;

(4) Provide the date of issuance or last review;

(5) State precisely the elements of information to be protected;

(6) State which classification level applies to each element of information, and, when useful, specify the elements of information that are unclassified;

(7) State, when applicable, special handling caveats;

(8) State a concise reason for classification which, at a minimum, cites the applicable classification category or categories in section 1.4 of the Order; and

(9) Prescribe a specific date or event for declassification, the marking "50X1–HUM" or "50X2–WMD" as appropriate, or one or more of the exemption codes listed in 2001.26(a)(2), provided that:

(i) The exemption has been approved by the Panel under section 3.3(j) of the Order;

(ii) The Panel is notified of the intent to take such actions for specific information in advance of approval and the information remains in active use; and

(iii) The exemption code is accompanied with a declassification date or event that has been approved by the Panel.

(c) *Dissemination of classification guides.* Classification guides shall be disseminated as necessary to ensure the proper and uniform derivative classification of information.

(d) *Reviewing and updating classification guides.* (1) Agencies shall incorporate original classification decisions into classification guides as soon as practicable.

(2) Originators of classification guides are encouraged to consult the users of guides and other subject matter experts when reviewing or updating guides. Also, users of classification guides are encouraged to notify the originator of the guide when they acquire information that suggests the need for change in the instructions contained in the guide.

§ 2001.16 Fundamental classification guidance review.

(a) *Performance of fundamental classification guidance reviews.* An initial fundamental classification guidance review shall be completed by every agency with original classification authority and which authors security classification guides no later than June 27, 2012. Agencies shall conduct fundamental classification guidance reviews on a periodic basis thereafter. The frequency of the reviews shall be determined by each agency considering factors such as the number of classification guides and the volume and type of information they cover. However, a review shall be conducted at least once every five years.

(b) *Coverage of reviews.* At a minimum, the fundamental classification guidance review shall focus on:

(1) Evaluation of content.

(i) Determining if the guidance conforms to current operational and technical circumstances; and

(ii) Determining if the guidance meets the standards for classification under section 1.4 of the Order and an assessment of likely damage under section 1.2 of the Order; and

(2) Evaluation of use:

(i) Determining if the dissemination and availability of the guidance is appropriate, timely, and effective; and

(ii) An examination of recent classification decisions that focuses on ensuring that classification decisions reflect the intent of the guidance as to what is classified, the appropriate level, the duration, and associated markings.

(c) *Participation in reviews.* The agency head or senior agency official shall direct the conduct of a fundamental classification guidance review and shall ensure the appropriate agency subject matter experts participate to obtain the broadest possible range of perspectives. To the extent practicable, input should also be obtained from external subject matter experts and external users of the reviewing agency's classification guidance and decisions.

(d) *Reports on results.* Agency heads shall provide a detailed report summarizing the results of each classification guidance review to ISOO and release an unclassified version to the public except when the existence of the guide or program is itself classified.

Subpart C—Identification and Markings

§ 2001.20 General.

A uniform security classification system requires that standard markings or other indicia be applied to classified information. Except in extraordinary circumstances, or as approved by the Director of ISOO, the marking of classified information shall not deviate from the following prescribed formats. If markings cannot be affixed to specific classified information or materials, the originator shall provide holders or recipients of the information with written instructions for protecting the information. Markings shall be uniformly and conspicuously applied to leave no doubt about the classified status of the information, the level of protection required, and the duration of classification.

§ 2001.21 Original classification.

(a) *Primary markings.* At the time of original classification, the following shall be indicated in a manner that is immediately apparent:

(1) *Classification authority.* The name and position, or personal identifier, of the original classification authority shall appear on the "Classified By" line. An example might appear as:

Classified By: David Smith, Chief, Division 5

or

Classified By: ID#IMNO1

(2) *Agency and office of origin.* If not otherwise evident, the agency and office of origin shall be identified and follow the name on the "Classified By" line. An example might appear as:

Classified By: David Smith, Chief, Division 5, Department of Good Works, Office of Administration.

(3) *Reason for classification.* The original classification authority shall identify the reason(s) for the decision to classify. The original classification authority shall include on the "Reason" line the number 1.4 plus the letter(s) that corresponds to that classification category in section 1.4 of the Order.

(i) These categories, as they appear in the Order, are as follows:

(A) Military plans, weapons systems, or operations;

(B) Foreign government information;

(C) Intelligence activities (including covert action), intelligence sources or methods, or cryptology;

(D) Foreign relations or foreign activities of the United States, including confidential sources;

(E) Scientific, technological, or economic matters relating to the national security;

(F) United States Government programs for safeguarding nuclear materials or facilities;

(G) Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans, or protection services relating to the national security; or

(H) The development, production, or use of weapons of mass destruction.

(ii) An example might appear as:

Classified By: David Smith, Chief, Division 5, Department of Good Works, Office of Administration Reason: 1.4(g)

(4) *Declassification instructions.* The duration of the original classification decision shall be placed on the "Declassify On" line. When declassification dates are displayed numerically, the following format shall be used: YYYYMMDD. Events must be reasonably definite and foreseeable. The original classification authority will apply one of the following instructions:

(i) A date or event for declassification that corresponds to the lapse of the information's national security sensitivity, which is equal to or less than 10 years from the date of the original decision. The duration of classification would be marked as:

Classified By: David Smith, Chief, Division 5, Department of Good Works, Office of Administration
Reason: 1.4(g)
Declassify On: 20201014 or
Declassify On: Completion of Operation

(ii) A date not to exceed 25 years from the date of the original decision. For example, on a document that contains information classified on October 10, 2010, apply a date up to 25 years on the "Declassify On" line:

Classified By: David Smith, Chief, Division 5, Department of Good Works, Office of Administration
Reason: 1.4(g)
Declassify On: 20351010

(iii) If the classified information should clearly and demonstrably be expected to reveal the identity of a confidential human source or a human intelligence source, no date or event is required and the marking "50X1–HUM" shall be used in the "Declassify On" line; or

(iv) If the classified information should clearly and demonstrably be expected to reveal key design concepts of weapons of mass destruction, no date or event is required and the marking "50X2–WMD" shall be used in the "Declassify On" line.

(b) *Overall marking.* The highest level of classification is determined by the highest level of any one portion within the document and shall appear in a way that will distinguish it clearly from the informational text.

(1) Conspicuously place the overall classification at the top and bottom of the outside of the front cover (if any), on the title page (if any), on the first

page, and on the outside of the back cover (if any).

(2) For documents containing information classified at more than one level, the overall marking shall be the highest level. For example, if a document contains some information marked "Secret" and other information marked "Confidential," the overall marking would be "Secret."

(3) Each interior page of a classified document shall be marked at the top and bottom either with the highest level of classification of information contained on that page, including the designation "Unclassified" when it is applicable, or with the highest overall classification of the document.

(c) *Portion marking.* Each portion of a document, ordinarily a paragraph, but including subjects, titles, graphics, tables, charts, bullet statements, sub-paragraphs, classified signature blocks, bullets and other portions within slide presentations, and the like, shall be marked to indicate which portions are classified and which portions are unclassified by placing a parenthetical symbol immediately preceding the portion to which it applies.

(1) To indicate the appropriate classification level, the symbols "(TS)" for Top Secret, "(S)" for Secret, and "(C)" for Confidential will be used.

(2) Portions which do not meet the standards of the Order for classification shall be marked with "(U)" for Unclassified.

(3) In cases where portions are segmented such as paragraphs, sub-paragraphs, bullets, and sub-bullets and the classification level is the same throughout, it is sufficient to put only one portion marking at the beginning of the main paragraph or main bullet. If there are different levels of classification among these segments, then all segments shall be portion marked separately in order to avoid over-classification of any one segment. If the information contained in a sub-paragraph or sub-bullet is a higher level of classification than its parent paragraph or parent bullet, this does not make the parent paragraph or parent bullet classified at that same level. Each portion shall reflect the classification level of that individual portion and not any other portions. At the same time, any portion, no matter what its status, is still capable of determining the overall classification of the document.

(d) *Dissemination control and handling markings.* Many agencies require additional control and handling markings that supplement the overall classification markings. See § 2001.24(j) for specific guidance.

(e) *Date of origin of document.* The date of origin of the document shall be indicated in a manner that is immediately apparent.

§ 2001.22 Derivative classification.

(a) *General.* Information classified derivatively on the basis of source documents or classification guides shall bear all markings prescribed in § 2001.20 and § 2001.21, except as provided in this section. Information for these markings shall be carried forward from the source document or taken from instructions in the appropriate classification guide.

(b) *Identity of persons who apply derivative classification markings.* Derivative classifiers shall be identified by name and position, or by personal identifier, in a manner that is immediately apparent on each derivatively classified document. If not otherwise evident, the agency and office of origin shall be identified and follow the name on the "Classified By" line. An example might appear as:

Classified By: Peggy Jones, Lead Analyst, Research and Analysis Division or
Classified By: ID # IMN01

(c) *Source of derivative classification.* (1) The derivative classifier shall concisely identify the source document or the classification guide on the "Derived From" line, including the agency and, where available, the office of origin, and the date of the source or guide. An example might appear as:

Derived From: Memo, "Funding Problems," October 20, 2008, Office of Administration, Department of Good Works or
Derived From: CG No. 1, Department of Good Works, dated October 20, 2008

(i) When a document is classified derivatively on the basis of more than one source document or classification guide, the "Derived From" line shall appear as:

Derived From: Multiple Sources

(ii) The derivative classifier shall include a listing of the source materials on, or attached to, each derivatively classified document.

(2) A document derivatively classified on the basis of a source document that is itself marked "Multiple Sources" shall cite the source document on its "Derived From" line rather than the term "Multiple Sources." An example might appear as:

Derived From: Report entitled, "New Weapons," dated October 20, 2009, Department of Good Works, Office of Administration

(d) *Reason for classification.* The reason for the original classification decision, as reflected in the source document(s) or classification guide, is not transferred in a derivative classification action.

(e) *Declassification instructions.* (1) The derivative classifier shall carry forward the instructions on the "Declassify On" line from the source document to the derivative document, or the duration instruction from the classification or declassification guide, unless it contains one of the declassification instructions as listed in paragraph (e)(3) of this section. If the source document is missing the declassification instruction, then a calculated date of 25 years from the date of the source document (if available) or the current date (if the source document date is not available) shall be carried forward by the derivative classifier.

(2) When a document is classified derivatively on the basis of more than one source document or more than one element of a classification guide, the "Declassify On" line shall reflect the longest duration of any of its sources.

(3) When a document is classified derivatively either from a source document(s) or a classification guide that contains one of the following declassification instructions, "Originating Agency's Determination Required," "OADR," or "Manual Review," "MR," or any of the exemption markings X1, X2, X3, X4, X5, X6, X7, and X8, the derivative classifier shall calculate a date that is 25 years from the date of the source document when determining a derivative document's date or event to be placed in the "Declassify On" line.

(i) If a document is marked with the declassification instructions "DCI Only" or "DNI Only" and does not contain information described in E.O. 12951, "Release of Imagery Acquired by Space-Based National Intelligence Reconnaissance Systems," the derivative classifier shall calculate a date that is 25 years from the date of the source document when determining a derivative document's date or event to be placed in the "Declassify On" line.

(ii) If a document is marked with "DCI Only" or "DNI Only" and the information is subject to E.O. 12951, the derivative classifier shall use a date or event as prescribed by the Director of National Intelligence.

(4) When determining the most restrictive declassification instruction among multiple source documents, adhere to the following hierarchy for determining the declassification instructions for the "Declassify On" line:

(i) 50X1–HUM or 50X2–WMD, or an ISOO-approved designator reflecting the Panel approval for classification beyond 50 years in accordance with section 3.3(h)(2) of the Order;

(ii) 25X1 through 25X9, with a date or event;

(iii) A specific declassification date or event within 25 years;

(iv) Absent guidance from an original classification authority with jurisdiction over the information, a calculated 25-year date from the date of the source document.

(5) When declassification dates are displayed numerically, the following format shall be used: YYYYMMDD.

(f) *Overall marking.* The derivative classifier shall conspicuously mark the classified document with the highest level of classification of information included in the document, as provided in § 2001.21(b).

(g) *Portion marking.* Each portion of a derivatively classified document shall be marked immediately preceding the portion to which it applies, in accordance with its source, and as provided in § 2001.21(c).

(h) *Dissemination control and handling markings.* Many agencies require additional control and handling markings that supplement the overall classification markings. See § 2001.24(j) for specific guidance.

(i) *Date of origin of document.* The date of origin of the document shall be indicated in a manner that is immediately apparent.

§ 2001.23 Classification marking in the electronic environment.

(a) *General.* Classified national security information in the electronic environment shall be:

(1) Subject to all requirements of the Order.

(2) Marked with proper classification markings to the extent that such marking is practical, including portion marking, overall classification, "Classified By," "Derived From," "Reason" for classification (originally classified information only), and "Declassify On."

(3) Marked with proper classification markings when appearing in an electronic output (*e.g.*, database query) in which users of the information will need to be alerted to the classification status of the information.

(4) Marked in accordance with derivative classification procedures, maintaining traceability of classification decisions to the original classification authority. In cases where classified information in an electronic environment cannot be marked in this manner, a warning shall be applied to alert users that the information may not be used as a source for derivative classification and providing a point of contact and instructions for users to receive further guidance on the use and classification of the information.

(5) Prohibited from use as source of derivative classification if it is dynamic in nature (*e.g.*, wikis and blogs) and where information is not marked in accordance with the Order.

(b) *Markings on classified e-mail messages.* (1) E-mail transmitted on or prepared for transmission on classified systems or networks shall be configured to display the overall classification at the top and bottom of the body of each message. The overall classification marking string for the e-mail shall reflect the classification of the header and body of the message. This includes the subject line, the text of the e-mail, a classified signature block, attachments, included messages, and any other information conveyed in the body of the e-mail. A single linear text string showing the overall classification and markings shall be included in the first line of text and at the end of the body of the message after the signature block.

(2) Classified e-mail shall be portion marked. Each portion shall be marked to reflect the highest level of information contained in that portion. A text portion containing a uniform resource locator (URL) or reference (*i.e.*, link) to another document shall be portion marked based on the classification of the content of the URL or link text, even if the content to which it points reflects a higher classification marking.

(3) A classified signature block shall be portion marked to reflect the highest classification level markings of the information contained in the signature block itself.

(4) Subject lines shall be portion marked to reflect the sensitivity of the information in the subject line itself and shall not reflect any classification markings for the e-mail content or attachments. Subject lines and titles shall be portion marked before the subject or title.

(5) For a classified e-mail, the classification authority block shall be placed after the signature block, but before the overall classification marking string at the end of the e-mail. These blocks may appear as single linear text strings instead of the traditional appearance of three lines of text.

(6) When forwarding or replying to an e-mail, individuals shall ensure that, in addition to the markings required for the content of the reply or forward e-mail itself, the markings shall reflect the overall classification and declassification instructions for the entire string of e-mails and attachments. This will include any newly drafted material, material received from previous senders, and any attachments.

(c) *Marking Web pages with classified content.* (1) Web pages shall be classified and marked on their own content regardless of the classification of the pages to which they link. Any presentation of information to which the web materials link shall also be marked based on its own content.

(2) The overall classification marking string for every web page shall reflect

the overall classification markings (and any dissemination control or handling markings) for the information on that page. Linear text appearing on both the top and bottom of the page is acceptable.

(3) If any graphical representation is utilized, a text equivalent of the overall classification marking string shall be included in the hypertext statement and page metadata. This will enable users without graphic display to be aware of the classification level of the page and allows for the use of text translators.

(4) Classified Web pages shall be portion marked. Each portion shall be marked to reflect the highest level of information contained in that portion. A portion containing a URL or reference to another document shall be portion marked based on the classification of the content of the URL itself, even if the content to which it points reflects a higher classification marking.

(5) Classified Web pages shall include the classification authority block on either the top or bottom of the page. These blocks may appear as single linear text strings instead of the traditional appearance of three lines of text.

(6) Electronic media files such as video, audio, images, or slides shall carry the overall classification and classification authority block, unless the addition of such information would render them inoperable. In such cases, another procedure shall be used to ensure recipients are aware of the classification status of the information and the declassification instructions.

(d) *Marking classified URLs.* URLs provide unique addresses in the electronic environment for web content and shall be portion marked based on the classification of the content of the URL itself. The URL shall not be portion marked to reflect the classification of the content to which it points. URLs shall be developed at an unclassified level whenever possible. When a URL is classified, a classification portion mark shall be used in the text of the URL string in a way that does not make the URL inoperable to identify the URL as a classified portion in any textual references to that URL. An example may appear as:

http://www.center.xyz/SECRET/filename__(S).html
http://www.center.xyz/filename2__(TS).html
http://www.center.xyz/filename__(TS//NF).html

(e) *Marking classified dynamic documents and relational databases.* (1) A dynamic page contains electronic information derived from a changeable source or ad hoc query, such as a relational database. The classification levels of information returned may vary depending upon the specific request.

(2) If there is a mechanism for determining the actual classification markings for dynamic documents, the appropriate classification markings shall be applied to and displayed on the document. If such a mechanism does not exist, the default should be the highest level of information in the database and a warning shall be applied at the top of each page of the document. Such content shall not be used as a basis for derivative classification. An example of such an applied warning may appear as:

This content is classified at the [insert system-high classification level] level and may contain elements of information that are unclassified or classified at a lower level than the overall classification displayed. This content may not be used as a source of derivative classification; refer instead to the pertinent classification guide(s).

(3) This will alert the users of the information that there may be elements of information that may be either unclassified or classified at a lower level than the highest possible classification of the information returned. Users shall be encouraged to make further inquiries concerning the status of individual elements in order to avoid unnecessary classification and/or impediments to information sharing. Resources such as classification guides and points of contact shall be established to assist with these inquiries.

(4) Users developing a document based on query results from a database must properly mark the document in accordance with § 2001.22. If there is doubt about the correct markings, users should contact the database originating agency for guidance.

(f) *Marking classified bulletin board postings and blogs.* (1) A blog, an abbreviation of the term "web log," is a Web site consisting of a series of entries,

often commentary, description of events, or other material such as graphics or video, created by the same individual as in a journal or by many individuals. While the content of the overall blog is dynamic, entries are generally static in nature.

(2) The overall classification marking string for every bulletin board or blog shall reflect the overall classification markings for the highest level of information allowed in that space. Linear text appearing on both the top and bottom of the page is acceptable.

(3) Subject lines of bulletin board postings, blog entries, or comments shall be portion marked to reflect the sensitivity of the information in the subject line itself, not the content of the post.

(4) The overall classification marking string for the bulletin board posting, blog entry, or comment shall reflect the classification markings for the subject line, the text of the posting, and any other information in the posting. These strings shall be entered manually or utilizing an electronic classification tool in the first line of text and at the end of the body of the posting. These strings may appear as single linear text.

(5) Bulletin board postings, blog entries, or comments shall be portion marked. Each portion shall be marked to reflect the highest level of information contained in that portion.

(g) *Marking classified wikis.* (1) Initial wiki submissions shall include the overall classification marking string, portion marking, and the classification authority block string in the same manner as mentioned above for bulletin boards and blogs. All of these strings may appear as single line text.

(2) When users modify existing entries which alter the classification level of the content or add new content, they shall change the required markings to reflect the classification markings for the resulting information. Systems shall provide a means to log the identity of each user, the changes made, and the time and date of each change.

(3) Wiki articles and entries shall be portion marked. Each portion shall be marked to reflect the highest level of information contained in that portion.

(h) *Instant messaging, chat, and chat rooms.* (1) Instant messages and chat conversations generally consist of brief textual messages but may also include URLs, images, or graphics. Chat discussions captured for retention or printing shall be marked at the top and bottom of each page with the overall classification reflecting all of the information within the discussion and, for classified discussions, portion markings and the classification authority block string shall also appear.

(2) Chat rooms shall display system-high overall classification markings and shall contain instructions informing users that the information may not be used as a source for derivative classification unless it is portion marked, contains an overall classification marking, and a classification authority block.

(i) *Attached files.* When files are attached to another electronic message or document, the overall classification of the message or document shall account for the classification level of the attachment and the message or document shall be marked in accordance with § 2001.24(b).

(ii) *Reserved.*

§ 2001.24 Additional requirements.

(a) *Marking prohibitions.* Markings other than "Top Secret," "Secret," and "Confidential" shall not be used to identify classified national security information.

(b) *Transmittal documents.* A transmittal document shall indicate on its face the highest classification level of any classified information attached or enclosed. The transmittal shall also include conspicuously on its face the following or similar instructions, as appropriate:

Unclassified When Classified Enclosure Removed or

Upon Removal of Attachments, This Document is (Classification Level)

(c) *Foreign government information.* Unless otherwise evident, documents that contain foreign government information should include the marking, "This Document Contains (indicate country of origin) Information." Agencies may also require that the portions of the documents that contain the foreign government information be

marked to indicate the government and classification level, using accepted country code standards, *e.g.*, "(Country code—C)." If the identity of the specific government must be concealed, the document shall be marked, "This Document Contains Foreign Government Information," and pertinent portions shall be marked "FGI" together with the classification level, *e.g.*, "(FGI–C)." In such cases, a separate record that identifies the foreign government shall be maintained in order to facilitate subsequent declassification actions. If the fact that information is foreign government information must be concealed, the markings described in this paragraph shall not be used and the document shall be marked as if it were wholly of U.S. origin. When classified records are transferred to NARA for storage or archival purposes, the accompanying documentation shall, at a minimum, identify the boxes that contain foreign government information.

(d) *Working papers.* A working paper is defined as documents or materials, regardless of the media, which are expected to be revised prior to the preparation of a finished product for dissemination or retention. Working papers containing classified information shall be dated when created, marked with the highest classification of any information contained in them, protected at that level, and if otherwise appropriate, destroyed when no longer needed. When any of the following conditions applies, working papers shall be controlled and marked in the same manner prescribed for a finished document at the same classification level:

(1) Released by the originator outside the originating activity;

(2) Retained more than 180 days from the date of origin; or

(3) Filed permanently.

(e) *Other material.* Bulky material, equipment, and facilities, etc., shall be clearly identified in a manner that leaves no doubt about the classification status of the material, the level of protection required, and the duration of classification. Upon a finding that identification would itself reveal classified information, such identification is not required. Supporting documentation for such a finding must be maintained in the appropriate security facility.

(f) *Unmarked materials.* Information contained in unmarked records, or presidential or related materials, and which pertains to the national defense or foreign relations of the United States, created, maintained, and protected as classified information under prior orders shall continue to be treated as classified information under the Order, and is subject to its provisions regarding declassification.

(g) *Classification by compilation/aggregation.* Compilation of items that are individually unclassified may be classified if the compiled information meets the standards established in section 1.2 of the Order and reveals an additional association or relationship, as determined by the original classification authority. Any unclassified portions will be portion marked (U), while the overall markings will reflect the classification of the compiled information even if all the portions are marked (U). In any such situation, clear instructions must appear with the compiled information as to the circumstances under which the individual portions constitute a classified compilation, and when they do not.

(h) *Commingling of Restricted Data (RD) and Formerly Restricted Data (FRD) with information classified under the Order.* (1) To the extent practicable, the commingling in the same document of RD or FRD with information classified under the Order should be avoided. When it is not practicable to avoid such commingling, the marking requirements in the Order and this Directive, as well as the marking requirements in 10 CFR part 1045, *Nuclear Classification and Declassification*, must be followed.

(2) Automatic declassification of documents containing RD or FRD is prohibited. Documents marked as containing RD or FRD are excluded from the automatic declassification provisions of the Order until the RD or FRD designation is properly removed by the Department of Energy. When the Department of Energy determines that an RD or FRD designation may be removed, any remaining information

classified under the Order must be referred to the appropriate agency in accordance with the declassification provisions of the Order and this Directive.

(3) For commingled documents, the "Declassify On" line required by the Order and this Directive shall not include a declassification date or event and shall instead be annotated with "Not Applicable (or N/A) to RD/FRD portions" and "See source list for NSI portions." The source list, as described in § 2001.22(c)(1)(ii), shall include the declassification instruction for each of the source documents classified under the Order and shall not appear on the front page of the document.

(4) If an RD or FRD portion is extracted for use in a new document, the requirements of 10 CFR part 1045 must be followed.

(5) If a portion classified under the Order is extracted for use in a new document, the requirements of the Order and this Directive must be followed. The declassification date for the extracted portion shall be determined by using the source list required by § 2001.22(c)(1)(ii), the pertinent classification guide, or consultation with the original classification authority with jurisdiction for the information. However, if a commingled document is not portion marked, it shall not be used as a source for a derivatively classified document.

(6) If a commingled document is not portion marked based on appropriate authority, annotating the source list with the declassification instructions and including the "Declassify on" line in accordance with paragraph (h)(3) of this section are not required. The lack of declassification instructions does not eliminate the requirement to process commingled documents for declassification in accordance with the Order, this Directive, the Atomic Energy Act, or 10 CFR part 1045 when they are requested under statute or the Order.

(i) *Transclassified Foreign Nuclear Information (TFNI).* (1) As permitted under 42 U.S.C. 2162(e), the Department of Energy shall remove from the Restricted Data category such information concerning the atomic energy programs of other nations as the Secretary of Energy and the Director of National Intelligence jointly determine to be necessary to carry out the provisions of 50 U.S.C. 403 and 403–1 and safeguarded under applicable Executive orders as "National Security Information" under a process called transclassification.

(2) When Restricted Data information is transclassified and is safeguarded as "National Security Information," it shall be handled, protected, and classified in conformity with the provisions of the Order and this Directive. Such information shall be labeled as "TFNI" and with any additional identifiers prescribed by the Department of Energy. The label "TFNI" shall be included on documents to indicate the information's transclassification from the Restricted Data category and its declassification process governed by the Secretary of Energy under the Atomic Energy Act.

(3) Automatic declassification of documents containing TFNI is prohibited. Documents marked as containing TFNI are excluded from the automatic declassification provisions of the Order until the TFNI designation is properly removed by the Department of Energy. When the Department of Energy determines that a TFNI designation may be removed, any remaining information classified under the Order must be referred to the appropriate agency in accordance with the declassification provisions of the Order and this Directive.

(j) *Approved dissemination control and handling markings.* (1) Dissemination control and handling markings identify the expansion or limitation on the distribution of the information. These markings are in addition to, and separate from, the level of classification.

(2) Only those external dissemination control and handling markings approved by ISOO or, with respect to the Intelligence Community by the Director of National Intelligence for intelligence and intelligence-related information, may be used by agencies to control and handle the dissemination of classified information pursuant to agency regulations and to policy directives and guidelines issued under section 5.4(d)(2) and section 6.2(b) of the Order. Such approved markings shall be uniform and binding on all agencies

and must be available in a central registry.

(3) If used, the dissemination control and handling markings will appear at the top and bottom of each page after the level of classification.

(k) *Portion marking waivers.* (1) An agency head or senior agency official may request a waiver from the portion marking requirement for a specific category of information. Such a request shall be submitted to the Director of ISOO and should include the reasons that the benefits of portion marking are outweighed by other factors. The request must also demonstrate that the requested waiver will not create impediments to information sharing. Statements citing administrative burden alone will ordinarily not be viewed as sufficient grounds to support a waiver.

(2) Any approved portion marking waiver will be temporary with specific expiration dates.

(3) Requests for portion marking waivers from elements of the Intelligence Community (to include pertinent elements of the Department of Defense) should include a statement of support from the Director of National Intelligence or his or her designee. Requests for portion marking waivers from elements of the Department of Defense (to include pertinent elements of the Intelligence Community) should include a statement of support from the Secretary of Defense or his or her designee. Requests for portion marking waivers from elements of the Department of Homeland Security should include a statement of support from the Secretary of Homeland Security or his or her designee.

(4) A document not portion marked, based on an ISOO-approved waiver, must contain a warning statement that it may not be used as a source for derivative classification.

(5) If a classified document that is not portion marked, based on an ISOO-approved waiver, is transmitted outside the originating organization, the document must be portion marked unless otherwise explicitly provided in the waiver approval.

(l) *Marking information that has been reclassified.* Specific information may only be reclassified if all the conditions of section 1.7(d) of the Order and its implementing directives have been met.

(1) When taking this action, an original classification authority must include the following markings on the information:

(i) The level of classification;

(ii) The identity, by name and position, or by personal identifier of the original classification authority;

(iii) Declassification instructions;

(iv) A concise reason for classification, including reference to the applicable classification category from section 1.4 of the Order; and

(v) The date the reclassification action was taken.

(2) The original classification authority shall notify all known authorized holders of this action.

(m) *Marking of electronic storage media.* Classified computer media such as USB sticks, hard drives, CD ROMs, and diskettes shall be marked to indicate the highest overall classification of the information contained within the media.

§ 2001.25 Declassification markings.

(a) *General.* A uniform security classification system requires that standard markings be applied to declassified information. Except in extraordinary circumstances, or as approved by the Director of ISOO, the marking of declassified information shall not deviate from the following prescribed formats. If declassification markings cannot be affixed to specific information or materials, the originator shall provide holders or recipients of the information with written instructions for marking the information. Markings shall be uniformly and conspicuously applied to leave no doubt about the declassified status of the information and who authorized the declassification.

(b) The following markings shall be applied to records, or copies of records, regardless of media:

(1) The word, "Declassified;"

(2) The identity of the declassification authority, by name and position, or by personal identifier, or the title and date of the declassification guide. If the identity of the declassification

authority must be protected, a personal identifier may be used or the information may be retained in agency files.

(3) The date of declassification; and

(4) The overall classification markings that appear on the cover page or first page shall be lined with an "X" or straight line. An example might appear as:

~~SECRET~~

Declassified by David Smith, Chief, Division 5, August 17, 2008

§ 2001.26 Automatic declassification exemption markings.

(a) *Marking information exempted from automatic declassification at 25 years.* (1) When the Panel has approved an agency proposal to exempt permanently valuable information from automatic declassification at 25 years, the "Declassify On" line shall be revised to include the symbol "25X" plus the number(s) that corresponds to the category(ies) in section 3.3(b) of the Order. Except for when the exemption pertains to information that should clearly and demonstrably be expected to reveal the identity of a confidential human source, or a human intelligence source, or key design concepts of weapons of mass destruction, the revised "Declassify On" line shall also include the new date for declassification as approved by the Panel, not to exceed 50 years from the date of origin of the record. Records that contain information, the release of which should clearly and demonstrably be expected to reveal the identity of a confidential human source or a human intelligence source, or key design concepts of weapons of mass destruction, are exempt from automatic declassification at 50 years.

(2) The pertinent exemptions, using the language of section 3.3(b) of the Order, are:

25X1: reveal the identity of a confidential human source, a human intelligence source, a relationship with an intelligence or security service of a foreign government or international organization, or a non-human intelligence source; or impair the effectiveness of an intelligence method currently in use, available for use, or under development.

25X2: reveal information that would assist in the development, production, or use of weapons of mass destruction;

25X3: reveal information that would impair U.S. cryptologic systems or activities;

25X4: reveal information that would impair the application of state-of-the-art technology within a U.S. weapon system;

25X5: reveal formally named or numbered U.S. military war plans that remain in effect, or reveal operational or tactical elements of prior plans that are contained in such active plans;

25X6: reveal information, including foreign government information, that would cause serious harm to relations between the United States and a foreign government, or to ongoing diplomatic activities of the United States;

25X7: reveal information that would impair the current ability of United States Government officials to protect the President, Vice President, and other protectees for whom protection services, in the interest of the national security, are authorized;

25X8: reveal information that would seriously impair current national security emergency preparedness plans or reveal current vulnerabilities of systems, installations, or infrastructures relating to the national security; or

25X9: violate a statute, treaty, or international agreement that does not permit the automatic or unilateral declassification of information at 25 years.

(3) The pertinent portion of the marking would appear as:

Declassify On: 25X4, 20501001

(4) Documents should not be marked with a "25X" marking until the agency has been informed that the Panel concurs with the proposed exemption.

(5) Agencies need not apply a "25X" marking to individual documents contained in a file series exempted from automatic declassification under section 3.3(c) of the Order until the individual document is removed from the file and may only apply such a marking as approved by the Panel under section 3.3(j) of the Order.

(6) Information containing foreign government information will be marked with a date in the "Declassify On" line that is no more than 25 years from the date of the document unless the originating agency has applied for and received Panel approval to exempt foreign government information from declassification at 25 years. Upon receipt of Panel approval, the agency

may use either the 25X6 or 25X9 exemption markings, as appropriate, in the "Declassify On" followed by a date that has also been approved by the Panel. An example might appear as: 25X6, 20600129, or 25X9, 20600627. The marking "subject to treaty or international agreement" is not to be used at any time.

(b) *Marking information exempted from automatic declassification at 50 years.* Records exempted from automatic declassification at 50 years shall be automatically declassified on December 31 of a year that is no more than 75 years from the date of origin unless an agency head, within five years of that date, proposes to exempt specific information from declassification at 75 years and the proposal is formally approved by the Panel.

(1) When the information clearly and demonstrably could be expected to reveal the identity of a confidential human source or a human intelligence source, the marking shall be "50X1–HUM."

(2) When the information clearly and demonstrably could reveal key design concepts of weapons of mass destruction, the marking shall be "50X2–WMD."

(3) In extraordinary cases in which the Panel has approved an exemption from declassification at 50 years under section 3.3(h) of the Order, the same procedures as those under § 2001.26(a) will be followed with the exception that the number "50" will be used in place of the "25."

(4) Requests for exemption from automatic declassification at 50 years from elements of the Intelligence Community (to include pertinent elements of the Department of Defense) should include a statement of support from the Director of National Intelligence or his or her designee. Requests for automatic declassification exemptions from elements of the Department of Defense (to include pertinent elements of the Intelligence community) should include a statement of support from the Secretary of Defense or his or her designee. Requests for automatic declassification exemptions from elements of the Department of Homeland Security should include a statement of support from the Secretary of the Department of Homeland Security or his or her designee.

(c) *Marking information exempted from automatic declassification at 75 years.* Records exempted from automatic declassification at 75 years shall be automatically declassified on December 31 of the year that has been formally approved by the Panel.

(1) Information approved by the Panel as exempt from automatic declassification at 75 years shall be marked "75X" with the appropriate automatic declassification exemption category number followed by the approved declassification date or event.

(2) Requests for exemption from automatic declassification at 75 years from elements of the Intelligence Community (to include pertinent elements of the Department of Defense) should include a statement of support from the Director of National Intelligence or his or her designee. Requests for automatic declassification exemptions from elements of the Department of Defense (to include pertinent elements of the Intelligence community) should include a statement of support from the Secretary of Defense or his or her designee.

Subpart D—Declassification

§ 2001.30 Automatic declassification.

(a) *General.* All departments and agencies that have original classification authority or previously had original classification authority, or maintain records determined to be permanently valuable that contain classified national security information, shall comply with the automatic declassification provisions of the Order. All agencies with original classification authority shall cooperate with NARA in managing automatic declassification of accessioned Federal records, presidential papers and records, and donated historical materials under the control of the Archivist.

(b) *Presidential papers, materials, and records.* The Archivist shall establish procedures for the declassification of presidential, vice-presidential, or White House materials transferred to the legal custody of NARA or maintained in the presidential libraries.

(c) *Classified information in the custody of contractors, licensees, certificate holders, or grantees.* Pursuant to the provisions of the National Industrial Security Program, agencies must provide security classification/declassification guidance to such entities or individuals who possess classified information. Agencies must also determine if classified Federal records are held by such entities or individuals, and if so, whether they are permanent records of historical value and thus subject to section 3.3 of the Order. Until such a determination has been made by an appropriate agency official, such records shall not be subject to automatic declassification, or destroyed, and shall be safeguarded in accordance with the most recent security classification/declassification guidance provided by the agency.

(d) *Transferred information.* In the case of classified information transferred in conjunction with a transfer of functions, and not merely for storage, the receiving agency shall be deemed to be the originating agency.

(e) *Unofficially transferred information.* In the case of classified information that is not officially transferred as described in paragraph (d) of this section but that originated in an agency that has ceased to exist and for which there is no successor agency, the agency in possession shall serve as the originating agency and shall be responsible for actions for those records in accordance with section 3.3 of the Order and in consultation with the Director of the National Declassification Center (NDC).

(f) *Processing records originated by another agency.* When an agency uncovers classified records originated by another agency that appear to meet the criteria for referral according to section 3.3(d) of the Order, the finding agency shall identify those records for referral to the originating agency as described in § 2001.34.

(g) *Unscheduled records.* Classified information in records that have not been scheduled for disposal or retention by NARA is not subject to section 3.3 of the Order. Classified information in records that become scheduled as permanently valuable when that information is already more than 20 years old shall be subject to the automatic declassification provisions of section 3.3 of the Order five years from the date the records are scheduled. Classified information in records that become scheduled as permanently valuable when that information is less than 20 years old shall be subject to the automatic declassification provisions of section 3.3 of the Order at 25 years.

(h) *Temporary records and non-record materials.* Classified information contained in records determined not to be permanently valuable or non-record materials shall be processed in accordance with section 3.6(c) of the Order.

(i) *Foreign government information.* The declassifying agency is the agency that initially received or classified the information. When foreign government information appears to be subject to automatic declassification, the declassifying agency shall determine whether the information is subject to a treaty or international agreement that does not permit automatic or unilateral declassification. The declassifying agency shall also determine if another exemption under section 3.3(b) of the Order, such as the exemption that pertains to United States foreign relations, may apply to the information. If the declassifying agency believes such an exemption may apply, it should consult with any other concerned agencies in making its declassification determination. The declassifying agency or the Department of State, as appropriate, may consult with the foreign government prior to declassification.

(j) *Assistance to the Archivist of the United States.* Agencies shall consult with the Director of the NDC established in section 3.7 of the Order concerning their automatic declassification programs. At the request of the Archivist, agencies shall cooperate with the Director of the NDC in developing priorities for the declassification of records to ensure that declassification is accomplished efficiently and in a timely manner. Agencies shall consult with NARA and the Director of the NDC before reviewing records in their holdings to ensure that appropriate procedures are established for maintaining the integrity of the records and

that NARA receives accurate and sufficient information about agency declassification actions, including metadata and other processing information, when records are accessioned by NARA. This data shall include certification by the agency that the records have been reviewed in accordance with Public Law 105–261, section 3161 governing Restricted Data and Formerly Restricted Data.

(k) *Use of approved declassification guides.* Approved declassification guides are the sole basis for the exemption from automatic declassification of specific information as provided in section 3.3(b) of the Order and the sole basis for the continued classification of information under section 3.3(h) of the Order. These guides must be prepared in accordance with section 3.3(j) of the Order and include additional pertinent detail relating to the exemptions described in sections 3.3(b) and 3.3(h) of the Order, and follow the format required of declassification guides as described in § 2001.32. During a review under section 3.3 of the Order, it is expected that agencies will use these guides to identify specific information for exemption from automatic declassification. It is further expected that the guides or detailed declassification guidance will be made available to the NDC under section 3.7(b) of the Order and to appropriately cleared individuals of other agencies to support equity recognition.

(l) *Automatic declassification date.* No later than December 31 of the year that is 25 years from the date of origin, classified records determined to be permanently valuable shall be automatically declassified unless automatic declassification has been delayed for any reason as provided in § 2001.30(n) and sections 3.3(b) and (c) of the Order. If the date of origin of an individual record cannot be readily determined, the date of original classification shall be used instead.

(m) *Exemption from Automatic Declassification at 25, 50, or 75 years.* Agencies may propose to exempt from automatic declassification specific information, either by reference to information in specific records, in specific file series of records, or in the form of a declassification guide, in accordance with section 3.3(j) of the Order. Agencies may propose to exempt information within five years of, but not later than one year before the information is subject to automatic declassification. The agency head or senior agency official, within the specified timeframe, shall notify the Director of ISOO, serving as the Executive Secretary of the Panel, of the specific information being proposed for exemption from automatic declassification.

(n) *Delays in the onset of automatic declassification*—(1) *Media that make a review for possible declassification exemptions more difficult or costly.* An agency head or senior agency official shall consult with the Director of the NDC before delaying automatic declassification for up to five years for classified information contained in media that make a review for possible declassification more difficult or costly. When determined by NARA or jointly determined by NARA and another agency, the following may be delayed due to the increased difficulty and cost of conducting declassification processing:

(i) Records requiring extraordinary preservation or conservation treatment, to include reformatting, to preclude damage to the records by declassification processing;

(ii) Records which pose a potential menace to health, life, or property due to contamination by a hazardous substance; and

(iii) Electronic media if the media is subject to issues of software or hardware obsolescence or degraded data.

(2) *Referred records.* Records containing classified information that originated with other agencies or the disclosure of which would affect the interests or activities of other agencies and could reasonably be expected to fall under one or more of the exemption categories of section 3.3(b) of the Order shall be identified prior to the onset of automatic declassification for later referral to those agencies. Declassification reviewers shall be trained periodically on other agency equities to aid in the proper identification of other agency equities eligible for referral.

(i) Information properly identified as a referral to another agency contained in records accessioned by NARA or in

the custody of the presidential libraries shall be subject to automatic declassification only after the referral has been made available by NARA for agency review in accordance with § 2001.34, provided the information has not otherwise been properly exempted by an equity holding agency under section 3.3 of the Order.

(ii) Information properly identified as a referral to another agency contained in records maintained in the physical, but not legal, custody of NARA shall be subject to automatic declassification after accessioning and in accordance with § 2001.34, provided the information has not otherwise been properly exempted by an equity holding agency under section 3.3 of the Order.

(3) *Newly discovered records.* An agency head or senior agency official must consult with the Director of ISOO on any decision to delay automatic declassification of newly discovered records no later than 90 days, from the discovery of the records. The notification shall identify the records, their volume, the anticipated date for declassification, and the circumstances of the discovery. An agency may be granted up to three years from the date of discovery to make a declassification, exemption, or referral determination. If referrals to other agencies are properly identified, they will be handled in accordance with subparagraphs 2(i) and 2(ii) above.

(4) *Integral file blocks.* Classified records within an integral file block that are otherwise subject to automatic declassification under section 3.3 of the Order shall not be automatically declassified until December 31 of the year that is 25 years from the date of the most recent record within the file block. For purposes of automatic declassification, integral file blocks shall contain only records dated within ten years of the oldest record in the file block. Integral file blocks applied prior to December 29, 2009, that cover more than ten years remain in effect until December 31, 2012, unless an agency requests an extension from the Director of ISOO on a case-by-case basis prior to December 31, 2011, which is subsequently approved.

(5) *File series exemptions.* Agencies seeking to delay the automatic declassification of a specific series of records as defined in section 6.1(r) of the Order because it almost invariably contains information that falls within one or more of the exemption categories under section 3.3(b) must submit their request in accordance with section 3.3(c) of the Order to the Director of ISOO, serving as Executive Secretary of the Panel, at least one year prior to the onset of automatic declassification. Once approved by the Panel, the records in the file series exemption remain subject to section 3.5 of the Order. This delay applies only to records within the specific file series. Copies of records within the specific file series or records of a similar topic to the specific file series located elsewhere may be exempted in accordance with exemptions approved by the Panel.

(o) *Redaction standard.* Agencies are encouraged but are not required to redact documents that contain information that is exempt from automatic declassification under section 3.3 of the Order, especially if the information that must remain classified comprises a relatively small portion of the document. Any such redactions shall be performed in accordance with policies and procedures established in accordance with § 2001.45(d).

(p) *Restricted Data and Formerly Restricted Data.* (1) Restricted Data and Formerly Restricted Data are excluded from the automatic declassification requirements in section 3.3 of the Order because they are classified under the Atomic Energy Act of 1954, as amended. Restricted Data concerns:

(i) The design, manufacture, or utilization of atomic weapons;

(ii) The production of special nuclear material, *e.g.*, enriched uranium or plutonium; or

(iii) The use of special nuclear material in the production of energy.

(2) Formerly Restricted Data is information that is still classified under the Atomic Energy Act of 1954, as amended, but which has been removed from the Restricted Data category because it is related primarily to the military utilization of atomic weapons.

(3) Any document marked as containing Restricted Data or Formerly Restricted Data or identified as potentially containing unmarked Restricted Data or Formerly Restricted Data shall be referred to the Department of Energy in accordance with § 2001.34(b)(8).

(4) Automatic declassification of documents containing Restricted Data or Formerly Restricted Data is prohibited. Documents marked as containing Restricted Data or Formerly Restricted Data are excluded from the automatic declassification provisions of the Order until the Restricted Data or Formerly Restricted Data designation is properly removed by the Department of Energy. When the Department of Energy determines that a Restricted Data or Formerly Restricted Data designation may be removed, any remaining information classified under the Order must be referred to the appropriate agency in accordance with the declassification provisions of the Order and this Directive.

(5) Any document containing information concerning foreign nuclear programs that was removed from the Restricted Data category in order to carry out provisions of the National Security Act of 1947, as amended, shall be referred to the Department of Energy.

(6) The Secretary of Energy shall determine when information concerning foreign nuclear programs that was removed from the Restricted Data category in order to carry out the provisions of the National Security Act of 1947, as amended, may be declassified. Unless otherwise determined, information concerning foreign nuclear programs (*e.g.*, intelligence assessments or reports, foreign nuclear program information provided to the U.S. Government) shall be declassified when comparable information concerning the United States nuclear program is declassified. When the Secretary of Energy determines that information concerning foreign nuclear programs may be declassified, any remaining information classified under the Order must be referred to the appropriate agency in accordance with the declassification provisions of the Order and this Directive.

§ 2001.31 Systematic declassification review.

(a) *General.* Agencies shall establish systematic review programs for those records containing information exempted from automatic declassification. This includes individual records as well as file series of records. Agencies shall prioritize their review of such records in accordance with priorities established by the NDC.

§ 2001.32 Declassification guides.

(a) *Preparation of declassification guides.* Beginning one year after the effective date of this directive, declassification guides must be submitted to the Director of ISOO, serving as the Executive Secretary of the Panel, at least one year prior to the onset of automatic declassification for approval by the Panel. Currently approved guides remain in effect until a new guide is approved, to the extent they are otherwise applied consistent with section 3.3(b) of the Order. The information to be exempted must be narrowly defined, with sufficient specificity to allow the user to identify the information with precision. Exemptions must be based upon specific content and not type of document. Exemptions for general categories of information are not acceptable. Agencies must prepare guides that clearly delineate between the exemptions proposed under sections 3.3(b), 3.3(h)(1) and (2), and 3.3(h)(3).

(b) *General content of declassification guides.* Declassification guides must be specific and detailed as to the information requiring continued classification and clearly and demonstrably explain the reasons for continued classification. Declassification guides shall:

(1) Be submitted by the agency head or the designated senior agency official;

(2) Provide the date of issuance or last review;

(3) State precisely the information that the agency proposes to exempt from automatic declassification and to specifically declassify;

(4) Identify any related files series that have been exempted from automatic declassification pursuant to section 3.3(c) of the Order; and

(5) To the extent a guide is used in conjunction with the automatic declassification provisions in section 3.3 of the Order, state precisely the elements of information to be exempted from declassification to include:

(i) The appropriate exemption category listed in section 3.3(b), and, if appropriate, section 3.3(h) of the Order; and

(ii) A date or event for declassification that is in accordance with section 3.3(b) or section 3.3(h).

(c) *Internal review and update.* Agency declassification guides shall be reviewed and updated as circumstances require, but at least once every five years. Each agency shall maintain a list of its declassification guides in use.

(d) *Dissemination of guides.* (1) Declassification guides shall be disseminated within the agency to be used by all personnel with declassification review responsibilities.

(2) Declassification guides or detailed declassification guidance shall be submitted to the Director of the NDC in accordance with section 3.7(b)(3) of the Order.

§ 2001.33 Mandatory review for declassification.

(a) *U.S. originated information*—(1) *Regulations.* Each agency shall publish, and update as needed or required, in the FEDERAL REGISTER regulations concerning the handling of mandatory declassification review requests, to include the identity of the person(s) or office(s) to which requests should be addressed.

(2) *Processing*—(i) *Requests for classified records in the custody of the originating agency.* A valid mandatory declassification review request must be of sufficient specificity to allow agency personnel to locate the records containing the information sought with a reasonable amount of effort. Requests for broad types of information, entire file series of records, or similar nonspecific requests may be denied by agencies for processing under this section. In responding to mandatory declassification review requests, agencies shall make a final determination within one year from the date of receipt. When information cannot be declassified in its entirety, agencies shall make reasonable efforts to release, consistent with other applicable laws, those declassified portions of the requested information that constitute a coherent segment. Upon denial, in whole or in part, of an initial request, the agency shall also notify the requestor of the right of an administrative appeal, which must be filed within 60 days of receipt of the denial. Agencies receiving mandatory review requests are expected to conduct a line-by-line review of the record(s) for public access and are expected to release the information to the requestor, unless that information is prohibited from release under the provisions of a statutory authority, such as, but not limited to, the Freedom of Information Act, (5 U.S.C. 552), as amended, the Presidential Records Act of 1978 (44 U.S.C. 2201–2207), or the National Security Act of 1947 (Pub. L. 235, 61 Stat. 496, 50 U.S.C. Chapter 15).

(ii) *Requests for classified records in the custody of an agency other than the originating agency.* When an agency receives a mandatory declassification review request for records in its possession that were originated by another agency, it shall refer the request and the pertinent records to the originating agency. However, if the originating agency has previously agreed that the custodial agency may review its records, the custodial agency shall review the requested records in accordance with declassification guides or guidelines provided by the originating agency. Upon receipt of a request from the referring agency, the originating agency shall promptly process the request for declassification and release in accordance with this section. The originating agency shall communicate its declassification determination to the referring agency. The referring agency is responsible for collecting all agency review results and informing the requestor of any final decision regarding the declassification of the requested information unless a prior arrangement has been made with the originating agency.

(iii) *Appeals of denials of mandatory declassification review requests.* The agency appellate authority shall normally make a determination within 60 working days following the receipt of

an appeal. If additional time is required to make a determination, the agency appellate authority shall notify the requester of the additional time needed and provide the requester with the reason for the extension. The agency appellate authority shall notify the requestor in writing of the final determination and of the reasons for any denial. The appellate authority must inform the requestor of his or her final appeal rights to the Panel.

(iv) *Appeals to the Interagency Security Classification Appeals Panel.* In accordance with section 5.3(c) of the Order, the Panel shall publish in the FEDERAL REGISTER the rules and procedures for bringing mandatory declassification appeals before it.

(v) *Records subject to mandatory declassification review.* Records containing information exempted from automatic declassification in accordance with section 3.3(c) of the Order or with § 2001.30(n)(1) are still subject to the mandatory declassification review provisions of section 3.5 of the Order.

(b) *Foreign government information.* Except as provided in this paragraph, agencies shall process mandatory declassification review requests for classified records containing foreign government information in accordance with this section. The declassifying agency is the agency that initially received or classified the information. When foreign government information is being considered for declassification, the declassifying agency shall determine whether the information is subject to a treaty or international agreement that does not permit automatic or unilateral declassification. The declassifying agency or the Department of State, as appropriate, may consult with the foreign government(s) prior to declassification.

(c) *Cryptologic information.* Mandatory declassification review requests for cryptologic information shall be processed in accordance with special procedures issued by the Secretary of Defense and, when cryptologic information pertains to intelligence activities, the Director of National Intelligence.

(d) *Intelligence information.* Mandatory declassification review requests for information pertaining to intelligence sources, methods, and activities shall be processed in accordance with special procedures issued by the Director of National Intelligence.

(e) *Fees.* In responding to mandatory declassification review requests for classified records, agency heads may charge fees in accordance with 31 U.S.C. 9701 or relevant fee provisions in other applicable statutes.

(f) *Requests filed under mandatory declassification review and the Freedom of Information Act.* When a requester submits a request both under mandatory declassification review and the Freedom of Information Act (FOIA), the agency shall require the requestor to select one process or the other. If the requestor fails to select one or the other, the request will be treated as a FOIA request unless the requested materials are subject only to mandatory declassification review.

(g) *FOIA and Privacy Act requests.* Agency heads shall process requests for declassification that are submitted under the provisions of the FOIA, as amended, or the Privacy Act of 1974 (5 U.S.C. 552a), as amended, in accordance with the provisions of those Acts.

(h) *Redaction standard.* Agencies shall redact documents that are the subject of an access demand unless the overall meaning or informational value of the document is clearly distorted by redaction. The specific reason for the redaction, as provided for in section 1.4 or 3.3(b) of the Order, as applicable, must be included for each redaction. Information that is redacted due to a statutory authority must be clearly marked with the specific authority that authorizes the redaction. Any such redactions shall be performed in accordance with policies and procedures established in accordance with § 2001.45(d).

(i) *Limitations on requests.* Requests for mandatory declassification review made to an element of the Intelligence Community by anyone other than a citizen of the United States or an alien lawfully admitted for permanent residence, may be denied by the receiving Intelligence Community element. Documents required to be submitted for pre-publication review or other administrative process pursuant to an approved nondisclosure agreement are

not subject to mandatory declassification review.

§ 2001.34 Referrals.

(a) *General*. Referrals are required under sections 3.3(d)(3) and 3.6(b) of the Order in order to ensure the timely, efficient, and effective processing of reviews and requests and in order to protect classified information from inadvertent disclosure.

(b) *Automatic declassification*. The referral process for records subject to automatic declassification entails identification of records containing classified information that originated with other agencies or the disclosure of which would affect the interests or activities of other agencies. Those records that could reasonably be expected to fall under one or more of the exemptions in section 3.3(b) of the Order are eligible for referral. The referral process also entails formal notification to those agencies, making the records available for review by those agencies, and recording final agency determinations.

(1) In accordance with section 3.3(d)(3) of the Order, the identification of records eligible for referral is the responsibility of the primary reviewing agency and shall be completed prior to the date of automatic declassification established by section 3.3(a) of the Order.

(2) Except as otherwise determined by the Director of the NDC, primary reviewing agencies shall utilize the Standard Form 715, *Government Declassification Review Tab*, to tab and identify any Federal record requiring referral and record the referral in a manner that provides the referral information in an NDC database system.

(3) Notification of referral of records accessioned into NARA or in the custody of the presidential libraries, and making the records available for review, is the responsibility of NARA and shall be accomplished through the NDC.

(4) Within 180 days of the effective date of this provision, the NDC shall develop and provide the affected agencies with a comprehensive and prioritized schedule for the resolution of referrals contained in accessioned Federal records and Presidential records. The schedule shall be developed in consultation with the affected agencies, consider the public interest in the records, and be in accordance with the authorized delays to automatic declassification set forth in section 3.3(d) of the Order. The initial schedule shall cover the balance of the first effective fiscal year and four subsequent fiscal years. Thereafter, the schedule shall cover five fiscal years. The NDC shall consult with the affected agencies and update and provide such schedules annually.

(5) The NDC shall provide formal notification of the availability of a referral to the receiving agency and records will be subject to automatic declassification in accordance with the schedule promulgated by the NDC in paragraph (b)(4) of this section, unless the information has been properly exempted by an equity holding agency under section 3.3 of the Order.

(6) Records in the physical but not legal custody of NARA shall be subject to automatic declassification after accessioning and in accordance with paragraphs (b)(3) and (b)(5) of this section.

(7) Agencies that establish a centralized facility as described in section 3.7(e) may make direct referrals provided such activities fall within the priorities and schedule established by the NDC and the activity is otherwise coordinated with the NDC. In such cases, the centralized facility is responsible for providing formal notification of a referral to receiving agencies and for making the records available for review or direct formal referral to agencies by providing a copy of the records unless another mechanism is identified in coordination with the NDC. As established in section 3.3(d)(3)(B), referrals to agencies from a centralized agency records facility as described in section 3.7(e) of the Order will be automatically declassified up to three years after the formal notification has been made, if the receiving agency fails to provide a final determination.

(8) Records marked as containing Restricted Data or Formerly Restricted Data or identified as potentially containing unmarked Restricted Data or

Formerly Restricted Data shall be referred to the Department of Energy through the NDC. If the Department of Energy confirms that the document contains Restricted Data or Formerly Restricted Data, it shall then be excluded from the automatic declassification provisions of the Order until the Restricted Data or Formerly Restricted Data designation is properly removed.

(i) When the Department of Energy provides notification that a Restricted Data or Formerly Restricted Data designation is not appropriate or when it is properly removed, the record shall be processed for automatic declassification through the NDC.

(ii) In all cases, should the record be the subject of an access demand made pursuant to the Order or provision of law, the information classified pursuant to Executive order (rather than the Atomic Energy Act, as amended) must stand on its own merits.

(9) The NDC, as well as any centralized agency facility established under section 3.7(e) of the Order, shall track and document referral actions and decisions in a manner that facilitates archival processing for public access. Central agency facilities must work with the NDC to ensure documentation meets NDC requirements, and transfer all documentation on pending referral actions and referral decisions to the NDC when transferring the records to NARA.

(10) In all cases, receiving agencies shall acknowledge receipt of formal referral notifications in a timely manner. If a disagreement arises concerning referral notifications, the Director of ISOO will determine the automatic declassification date and notify the senior agency official, as well as the NDC or the primary reviewing agency.

(11) *Remote Archives Capture (RAC).* Presidential records or materials scanned in the RAC process shall be prioritized and scheduled for review by the NDC. The initial notification shall be made to the agency with primary equity, which shall have up to one year to act on its information and to identify all other equities eligible for referral. All such additional referrals in an individual record shall be made at the same time, and once notified by the NDC of an eligible referral, such receiving agencies shall have up to one year to review the records before the onset of automatic declassification.

(c) *Agencies eligible to receive referrals.* The Director of ISOO will publish annually a list of those agencies eligible to receive referrals for each calendar year.

(d) *Systematic declassification review.* The identification of equities shall be accomplished in accordance with paragraph (b) of this section. Priorities for review will be established by the NDC.

(e) *Identification of interests other than national security.* Referrals under sections 3.3(d)(3) and 3.6(b) of the Order shall be assumed to be intended for later public release unless withholding is otherwise authorized and warranted under applicable law. If a receiving agency proposes to withhold any such information, it must notify the referring agency at the time they otherwise respond to the referral. Such notification shall identify the specific information at issue and the pertinent law.

§ 2001.35 Discretionary declassification.

(a) In accordance with section 3.1(d) of the Order, agencies may declassify information when the public interest in disclosure outweighs the need for continued classification.

(b) Agencies may also establish a discretionary declassification program that is separate from their automatic, systematic, and mandatory review programs.

§ 2001.36 Classified information in the custody of private organizations or individuals.

(a) *Authorized holders.* Agencies may allow for the holding of classified information by a private organization or individual provided that all access and safeguarding requirements of the Order have been met. Agencies must provide declassification assistance to such organizations or individuals.

(b) *Others.* Anyone who becomes aware of organizations or individuals who possess potentially classified national security information outside of government control must contact the

Director of ISOO for guidance and assistance. The Director of ISOO, in consultation with other agencies, as appropriate, will ensure that the safeguarding and declassification requirements of the Order are met.

§ 2001.37 Assistance to the Department of State.

Heads of agencies shall assist the Department of State in its preparation of the Foreign Relations of the United States (FRUS) series by facilitating access to appropriate classified materials in their custody and by expediting declassification review of documents proposed for inclusion in the FRUS. If an agency fails to provide a final declassification review determination regarding a Department of State referral within 120 days of the date of the referral, or if applicable, within 120 days of the date of a High Level Panel decision, the Department of State, consistent with 22 U.S.C. 4353 and any implementing agency procedures, may seek the assistance of the Panel.

Subpart E—Safeguarding

§ 2001.40 General.

(a) Classified information, regardless of its form, shall be afforded a level of protection against loss or unauthorized disclosure commensurate with its level of classification.

(b) Except for foreign government information, agency heads or their designee(s) may adopt alternative measures, using risk management principles, to protect against loss or unauthorized disclosure when necessary to meet operational requirements. When alternative measures are used for other than temporary, unique situations, the alternative measures shall be documented and provided to the Director of ISOO. Upon request, the description shall be provided to any other agency with which classified information or secure facilities are shared. In all cases, the alternative measures shall provide protection sufficient to reasonably deter and detect loss or unauthorized disclosure. Risk management factors considered will include sensitivity, value, and crucial nature of the information; analysis of known and anticipated threats; vulnerability; and countermeasure benefits versus cost.

(c) North Atlantic Treaty Organization (NATO) classified information shall be safeguarded in compliance with U.S. Security Authority for NATO Instruction (USSAN) 1–07. Other foreign government information shall be safeguarded as described herein for U.S. information except as required by an existing treaty, agreement or other obligation (hereinafter, obligation). When the information is to be safeguarded pursuant to an existing obligation, the additional requirements at § 2001.54 may apply to the extent they were required in the obligation as originally negotiated or are agreed upon during amendment. Negotiations on new obligations or amendments to existing obligations shall strive to bring provisions for safeguarding foreign government information into accord with standards for safeguarding U.S. information as described in this Directive.

(d) *Need-to-know determinations.* (1) Agency heads, through their designees, shall identify organizational missions and personnel requiring access to classified information to perform or assist in authorized governmental functions. These mission and personnel requirements are determined by the functions of an agency or the roles and responsibilities of personnel in the course of their official duties. Personnel determinations shall be consistent with section 4.1(a) of the Order.

(2) In instances where the provisions of section 4.1(a) of the Order are met, but there is a countervailing need to restrict the information, disagreements that cannot be resolved shall be referred by agency heads or designees to either the Director of ISOO or, with respect to the Intelligence Community, the Director of National Intelligence, as appropriate. Disagreements concerning information protected under section 4.3 of the Order shall instead be referred to the appropriate official named in section 4.3 of the Order.

§ 2001.41 Responsibilities of holders.

Authorized persons who have access to classified information are responsible for:

(a) Protecting it from persons without authorized access to that information, to include securing it in approved equipment or facilities whenever it is not under the direct control of an authorized person;

(b) Meeting safeguarding requirements prescribed by the agency head; and

(c) Ensuring that classified information is not communicated over unsecured voice or data circuits, in public conveyances or places, or in any other manner that permits interception by unauthorized persons.

§ 2001.42 Standards for security equipment.

(a) *Storage*. The Administrator of the General Services Administration (GSA) shall, in coordination with agency heads originating classified information, establish and publish uniform standards, specifications, qualified product lists or databases, and supply schedules for security equipment designed to provide secure storage for classified information. Whenever new secure storage equipment is procured, it shall be in conformance with the standards and specifications established by the Administrator of the GSA, and shall, to the maximum extent possible, be of the type available through the Federal Supply System.

(b) *Destruction*. Effective January 1, 2011, only equipment listed on an Evaluated Products List (EPL) issued by the National Security Agency (NSA) may be utilized to destroy classified information using any method covered by an EPL. However, equipment approved for use prior to January 1, 2011, and not found on an EPL, may be utilized for the destruction of classified information until December 31, 2016. Unless NSA determines otherwise, whenever an EPL is revised, equipment removed from an EPL may be utilized for the destruction of classified information up to six years from the date of its removal from an EPL. In all cases, if any such previously approved equipment needs to be replaced or otherwise requires a rebuild or replacement of a critical assembly, the unit must be taken out of service for the destruction in accordance with this section. The Administrator of the GSA shall, to the maximum extent possible, coordinate supply schedules and otherwise seek to make equipment on an EPL available through the Federal Supply System.

§ 2001.43 Storage.

(a) *General*. Classified information shall be stored only under conditions designed to deter and detect unauthorized access to the information. Storage at overseas locations shall be at U.S. Government-controlled facilities unless otherwise stipulated in treaties or international agreements. Overseas storage standards for facilities under a Chief of Mission are promulgated under the authority of the Overseas Security Policy Board.

(b) *Requirements for physical protection*—(1) *Top Secret*. Top Secret information shall be stored in a GSA-approved security container, a vault built to Federal Standard (FED STD) 832, or an open storage area constructed in accordance with § 2001.53. In addition, supplemental controls are required as follows:

(i) For GSA-approved containers, one of the following supplemental controls:

(A) Inspection of the container every two hours by an employee cleared at least to the Secret level;

(B) An Intrusion Detection System (IDS) with the personnel responding to the alarm arriving within 15 minutes of the alarm annunciation. Acceptability of Intrusion Detection Equipment (IDE): All IDE must be in accordance with standards approved by ISOO. Government and proprietary installed, maintained, or furnished systems are subject to approval only by the agency head; or

(C) Security-In-Depth coverage of the area in which the container is located, provided the container is equipped with a lock meeting Federal Specification FF–L–2740.

(ii) For open storage areas covered by Security-In-Depth, an IDS with the personnel responding to the alarm arriving within 15 minutes of the alarm annunciation.

(iii) For open storage areas not covered by Security-In-Depth, personnel responding to the alarm shall arrive within five minutes of the alarm annunciation.

(2) *Secret*. Secret information shall be stored in the same manner as Top Secret information or, until October 1, 2012, in a non-GSA-approved container having a built-in combination lock or in a non-GSA-approved container secured with a rigid metal lockbar and an agency head approved padlock. Security-In-Depth is required in areas in which a non-GSA-approved container or open storage area is located. Except for storage in a GSA-approved container or a vault built to FED STD 832, one of the following supplemental controls is required:

(i) Inspection of the container or open storage area every four hours by an employee cleared at least to the Secret level; or

(ii) An IDS with the personnel responding to the alarm arriving within 30 minutes of the alarm annunciation.

(3) *Confidential*. Confidential information shall be stored in the same manner as prescribed for Top Secret or Secret information except that supplemental controls are not required.

(c) *Combinations*. Use and maintenance of dial-type locks and other changeable combination locks.

(1) *Equipment in service*. Combinations to dial-type locks shall be changed only by persons authorized access to the level of information protected unless other sufficient controls exist to prevent access to the lock or knowledge of the combination. Combinations shall be changed under the following conditions:

(i) Whenever such equipment is placed into use;

(ii) Whenever a person knowing the combination no longer requires access to it unless other sufficient controls exist to prevent access to the lock; or

(iii) Whenever a combination has been subject to possible unauthorized disclosure.

(2) *Equipment out of service*. When security equipment is taken out of service, it shall be inspected to ensure that no classified information remains and the combination lock should be reset to a standard combination of 50–25–50 for built-in combination locks or 10–20–30 for combination padlocks.

(d) *Key operated locks*. When special circumstances exist, an agency head may approve the use of key operated locks for the storage of Secret and Confidential information. Whenever such locks are used, administrative procedures for the control and accounting of keys and locks shall be included in implementing regulations required under section 5.4(d)(2) of the Order.

(e) *Repairs*. The neutralization and repair of GSA-approved security containers and vault doors will be in accordance with FED STD 809.

§ 2001.44 Reciprocity of use and inspection of facilities.

(a) Once a facility is authorized, approved, certified, or accredited for classified use, then all agencies desiring to conduct classified work in the designated space(s) at the same security level shall accept the authorization, approval, certification, or accreditation without change, enhancements, or upgrades provided that no waiver, exception, or deviation has been issued or approved. In the event that a waiver exception, or deviation was granted in the original accreditation of the designated space(s), an agency seeking to utilize the designated facility space may require that a risk mitigation strategy be implemented or agreed upon prior to using the space(s).

(b) Subsequent security inspections or reviews for authorization, approval, certification, or accreditation purposes shall normally be conducted no more frequently than annually unless otherwise required due to a change in the designated facility space(s) or due to a change in the use or ownership of the facility space(s). This does not imply a formal one-year inspection or review requirement or establish any other formal period for inspections or review.

§ 2001.45 Information controls.

(a) *General*. Agency heads shall establish a system of control measures which assure that access to classified information is provided to authorized persons. The control measures shall be appropriate to the environment in which the access occurs and the nature and volume of the information. The system shall include technical, physical, and personnel control measures. Administrative control measures which

may include records of internal distribution, access, generation, inventory, reproduction, and disposition of classified information shall be required when technical, physical and personnel control measures are insufficient to deter and detect access by unauthorized persons.

(1) *Combinations.* Combinations to locks used to secure vaults, open storage areas, and security containers that are approved for the safeguarding of classified information shall be protected in the same manner as the highest level of classified information that the vault, open storage area, or security container is used to protect.

(2) *Computer and information system passwords.* Passwords shall be protected in the same manner as the highest level of classified information that the computer or system is certified and accredited to process. Passwords shall be changed on a frequency determined to be sufficient to meet the level of risk assessed by the agency.

(b) *Reproduction.* Reproduction of classified information shall be held to the minimum consistent with operational requirements. The following additional control measures shall be taken:

(1) Reproduction shall be accomplished by authorized persons knowledgeable of the procedures for classified reproduction;

(2) Unless restricted by the originating agency, Top Secret, Secret, and Confidential information may be reproduced to the extent required by operational needs, or to facilitate review for declassification;

(3) Copies of classified information shall be subject to the same controls as the original information; and

(4) The use of technology that prevents, discourages, or detects the unauthorized reproduction of classified information is encouraged.

(c) *Forms.* The use of standard forms prescribed in subpart H of this part is mandatory for all agencies that create and/or handle national security information.

(d) *Redaction*—(1) *Policies and procedures.* Classified information may be subject to loss, compromise, or unauthorized disclosure if it is not correctly redacted. Agencies shall establish policies and procedures for the redaction of classified information from documents intended for release. Such policies and procedures require the approval of the agency head and shall be sufficiently detailed to ensure that redaction is performed consistently and reliably, using only approved redaction methods that permanently remove the classified information from copies of the documents intended for release. Agencies shall ensure that personnel who perform redaction fully understand the policies, procedures, and methods and are aware of the vulnerabilities surrounding the process.

(2) *Technical guidance for redaction.* Technical guidance concerning appropriate methods, equipment, and standards for the redaction of classified electronic and optical media shall be issued by NSA.

§ 2001.46 Transmission.

(a) *General.* Classified information shall be transmitted and received in an authorized manner which ensures that evidence of tampering can be detected, that inadvertent access can be precluded, and that provides a method which assures timely delivery to the intended recipient. Persons transmitting classified information are responsible for ensuring that intended recipients are authorized persons with the capability to store classified information in accordance with this Directive.

(b) *Dispatch.* Agency heads shall establish procedures which ensure that:

(1) All classified information physically transmitted outside facilities shall be enclosed in two layers, both of which provide reasonable evidence of tampering and which conceal the contents. The inner enclosure shall clearly identify the address of both the sender and the intended recipient, the highest classification level of the contents, and any appropriate warning notices. The outer enclosure shall be the same except that no markings to indicate that the contents are classified shall be visible. Intended recipients shall be identified by name only as part of an attention line. The following exceptions apply:

(i) If the classified information is an internal component of a packable item of equipment, the outside shell or body

may be considered as the inner enclosure provided it does not reveal classified information;

(ii) If the classified information is an inaccessible internal component of a bulky item of equipment, the outside or body of the item may be considered to be a sufficient enclosure provided observation of it does not reveal classified information;

(iii) If the classified information is an item of equipment that is not reasonably packable and the shell or body is classified, it shall be concealed with an opaque enclosure that will hide all classified features;

(iv) Specialized shipping containers, including closed cargo transporters or diplomatic pouch, may be considered the outer enclosure when used; and

(v) When classified information is hand-carried outside a facility, a locked briefcase may serve as the outer enclosure.

(2) Couriers and authorized persons designated to hand-carry classified information shall ensure that the information remains under their constant and continuous protection and that direct point-to-point delivery is made. As an exception, agency heads may approve, as a substitute for a courier on direct flights, the use of specialized shipping containers that are of sufficient construction to provide evidence of forced entry, are secured with a combination padlock meeting Federal Specification FF–P–110, are equipped with an electronic seal that would provide evidence of surreptitious entry and are handled by the carrier in a manner to ensure that the container is protected until its delivery is completed.

(c) *Transmission methods within and between the U.S., Puerto Rico, or a U.S. possession or trust territory.*

(1) *Top Secret.* Top Secret information shall be transmitted by direct contact between authorized persons; the Defense Courier Service or an authorized government agency courier service; a designated courier or escort with Top Secret clearance; electronic means over approved communications systems. Under no circumstances will Top Secret information be transmitted via the U.S. Postal Service or any other cleared or uncleared commercial carrier.

(2) *Secret.* Secret information shall be transmitted by:

(i) Any of the methods established for Top Secret; U.S. Postal Service Express Mail and U.S. Postal Service Registered Mail, as long as the Waiver of Signature block on the U.S. Postal Service Express Mail Label shall not be completed; and cleared commercial carriers or cleared commercial messenger services. The use of street-side mail collection boxes is strictly prohibited; and

(ii) Agency heads may, when a requirement exists for overnight delivery within the U.S. and its Territories, authorize the use of the current holder of the GSA contract for overnight delivery of information for the Executive Branch as long as applicable postal regulations (39 CFR. Chapter I) are met. Any such delivery service shall be U.S. owned and operated, provide automated in-transit tracking of the classified information, and ensure package integrity during transit. The contract shall require cooperation with government inquiries in the event of a loss, theft, or possible unauthorized disclosure of classified information. The sender is responsible for ensuring that an authorized person will be available to receive the delivery and verification of the correct mailing address. The package may be addressed to the recipient by name. The release signature block on the receipt label shall not be executed under any circumstances. The use of external (street side) collection boxes is prohibited. Classified Communications Security Information, NATO, and foreign government information shall not be transmitted in this manner.

(3) *Confidential.* Confidential information shall be transmitted by any of the methods established for Secret information or U.S. Postal Service Certified Mail. In addition, when the recipient is a U.S. Government facility, the Confidential information may be transmitted via U.S. First Class Mail. However, Confidential information shall not be transmitted to government contractor facilities via first class mail. When first class mail is used, the envelope or outer wrapper shall be marked

to indicate that the information is not to be forwarded, but is to be returned to sender. The use of streetside mail collection boxes is prohibited.

(d) *Transmission methods to a U.S. Government facility located outside the U.S.* The transmission of classified information to a U.S. Government facility located outside the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, or a U.S. possession or trust territory, shall be by methods specified above for Top Secret information or by the Department of State Courier Service. U.S. Registered Mail through Military Postal Service facilities may be used to transmit Secret and Confidential information provided that the information does not at any time pass out of U.S. citizen control nor pass through a foreign postal system.

(e) *Transmission of U.S. classified information to foreign governments.* Such transmission shall take place between designated government representatives using the government-to-government transmission methods described in paragraph (d) of this section or through channels agreed to by the National Security Authorities of the two governments. When classified information is transferred to a foreign government or its representative a signed receipt is required.

(f) *Receipt of classified information.* Agency heads shall establish procedures which ensure that classified information is received in a manner which precludes unauthorized access, provides for inspection of all classified information received for evidence of tampering and confirmation of contents, and ensures timely acknowledgment of the receipt of Top Secret and Secret information by an authorized recipient. As noted in paragraph (e) of this section, a receipt acknowledgment of all classified material transmitted to a foreign government or its representative is required.

§ 2001.47 Destruction.

Classified information identified for destruction shall be destroyed completely to preclude recognition or reconstruction of the classified information in accordance with procedures and methods prescribed by agency heads. The methods and equipment used to routinely destroy classified information include burning, cross-cut shredding, wet-pulping, melting, mutilation, chemical decomposition or pulverizing. Agencies shall comply with the destruction equipment standard stated in § 2001.42(b) of this Directive.

§ 2001.48 Loss, possible compromise or unauthorized disclosure.

(a) *General.* Any person who has knowledge that classified information has been or may have been lost, possibly compromised or disclosed to an unauthorized person(s) shall immediately report the circumstances to an official designated for this purpose.

(b) *Cases involving information originated by a foreign government or another U.S. government agency.* Whenever a loss or possible unauthorized disclosure involves the classified information or interests of a foreign government agency, or another U.S. government agency, the department or agency in which the compromise occurred shall advise the other government agency or foreign government of the circumstances and findings that affect their information or interests. However, foreign governments normally will not be advised of any security system vulnerabilities that contributed to the compromise.

(c) *Inquiry/investigation and corrective actions.* Agency heads shall establish appropriate procedures to conduct an inquiry/investigation of a loss, possible compromise or unauthorized disclosure of classified information, in order to implement appropriate corrective actions, which may include disciplinary sanctions, and to ascertain the degree of damage to national security.

(d) *Reports to ISOO.* In accordance with section 5.5(e)(2) of the Order, agency heads or senior agency officials shall notify the Director of ISOO when a violation occurs under paragraphs 5.5(b)(1), (2), or (3) of the Order that:

(1) Is reported to oversight committees in the Legislative branch;

(2) May attract significant public attention;

(3) Involves large amounts of classified information; or

(4) Reveals a potential systemic weakness in classification, safeguarding, or declassification policy or practices.

(e) *Department of Justice and legal counsel coordination.* Agency heads shall establish procedures to ensure coordination with legal counsel whenever a formal action, beyond a reprimand, is contemplated against any person believed responsible for the unauthorized disclosure of classified information. Whenever a criminal violation appears to have occurred and a criminal prosecution is contemplated, agency heads shall use established procedures to ensure coordination with:

(1) The Department of Justice, and

(2) The legal counsel of the agency where the individual responsible is assigned or employed.

§ 2001.49 Special access programs.

(a) *General.* The safeguarding requirements of this Directive may be enhanced for information in special access programs (SAP), established under the provisions of section 4.3 of the Order by the agency head responsible for creating the SAP. Agency heads shall ensure that the enhanced controls are based on an assessment of the value, critical nature, and vulnerability of the information.

(b) *Significant interagency support requirements.* Agency heads must ensure that a Memorandum of Agreement/Understanding is established for each SAP that has significant interagency support requirements, to appropriately and fully address support requirements and supporting agency oversight responsibilities for that SAP.

§ 2001.50 Telecommunications automated information systems and network security.

Each agency head shall ensure that classified information electronically accessed, processed, stored or transmitted is protected in accordance with applicable national policy issuances identified in the Committee on National Security Systems (CNSS) issuances and the Intelligence Community Directive (ICD) 503, *Intelligence Community Information Technology Systems Security Risk Management, Certification, and Accreditation.*

§ 2001.51 Technical security.

Based upon the risk management factors referenced in § 2001.40 of this directive, agency heads shall determine the requirement for technical countermeasures such as Technical Surveillance Countermeasures and TEMPEST necessary to detect or deter exploitation of classified information through technical collection methods and may apply countermeasures in accordance with NSTISSI 7000, *TEMPEST Countermeasures for Facilities,* and SPB Issuance 6–97, *National Policy on Technical Surveillance Countermeasures.*

§ 2001.52 Emergency authority.

(a) Agency heads or any designee may prescribe special provisions for the dissemination, transmission, safeguarding, and destruction of classified information during certain emergency situations.

(b) In emergency situations, in which there is an imminent threat to life or in defense of the homeland, agency heads or designees may authorize the disclosure of classified information to an individual or individuals who are otherwise not routinely eligible for access under the following conditions:

(1) Limit the amount of classified information disclosed to the absolute minimum to achieve the purpose;

(2) Limit the number of individuals who receive it;

(3) Transmit the classified information via approved Federal Government channels by the most secure and expeditious method to include those required in § 2001.46, or other means deemed necessary when time is of the essence;

(4) Provide instructions about what specific information is classified and how it should be safeguarded; physical custody of classified information must remain with an authorized Federal Government entity, in all but the most extraordinary circumstances;

(5) Provide appropriate briefings to the recipients on their responsibilities not to disclose the information and obtain a signed nondisclosure agreement;

(6) Within 72 hours of the disclosure of classified information, or the earliest opportunity that the emergency permits, but no later than 30 days after the release, the disclosing authority

must notify the originating agency of the information by providing the following information:

(i) A description of the disclosed information;

(ii) To whom the information was disclosed;

(iii) How the information was disclosed and transmitted;

(iv) Reason for the emergency release;

(v) How the information is being safeguarded; and

(vi) A description of the briefings provided and a copy of the nondisclosure agreements signed.

(7) Information disclosed in emergency situations shall not be required to be declassified as a result of such disclosure or subsequent use by a recipient.

§ 2001.53 Open storage areas.

This section describes the minimum construction standards for open storage areas.

(a) *Construction.* The perimeter walls, floors, and ceiling will be permanently constructed and attached to each other. All construction must be done in a manner as to provide visual evidence of unauthorized penetration.

(b) *Doors.* Doors shall be constructed of wood, metal, or other solid material. Entrance doors shall be secured with a built-in GSA-approved three-position combination lock. When special circumstances exist, the agency head may authorize other locks on entrance doors for Secret and Confidential storage. Doors other than those secured with the aforementioned locks shall be secured from the inside with either deadbolt emergency egress hardware, a deadbolt, or a rigid wood or metal bar which extends across the width of the door, or by other means approved by the agency head.

(c) *Vents, ducts, and miscellaneous openings.* All vents, ducts, and similar openings in excess of 96 square inches (and over 6 inches in its smallest dimension) that enter or pass through an open storage area shall be protected with either bars, expanded metal grills, commercial metal sounds baffles, or an intrusion detection system.

(d) *Windows.* (1) All windows which might reasonably afford visual observation of classified activities within the facility shall be made opaque or equipped with blinds, drapes, or other coverings.

(2) Windows within 18 feet of the ground will be constructed from or covered with materials which provide protection from forced entry. The protection provided to the windows need be no stronger than the strength of the contiguous walls. Open storage areas which are located within a controlled compound or equivalent may eliminate the requirement for forced entry protection if the windows are made inoperable either by permanently sealing them or equipping them on the inside with a locking mechanism and they are covered by an IDS (either independently or by the motion detection sensors within the area).

§ 2001.54 Foreign government information.

The requirements described below are additional baseline safeguarding standards that may be necessary for foreign government information, other than NATO information, that requires protection pursuant to an existing treaty, agreement, bilateral exchange or other obligation. NATO classified information shall be safeguarded in compliance with USSAN 1–07. To the extent practical, and to facilitate its control, foreign government information should be stored separately from other classified information. To avoid additional costs, separate storage may be accomplished by methods such as separate drawers of a container. The safeguarding standards described in paragraphs (a) through (e) of this section may be modified if required or permitted by treaties or agreements, or for other obligations, with the prior written consent of the National Security Authority of the originating government, hereafter "originating government."

(a) *Top Secret.* Records shall be maintained of the receipt, internal distribution, destruction, access, reproduction, and transmittal of foreign government Top Secret information. Reproduction requires the consent of the originating government. Destruction will be witnessed.

(b) *Secret.* Records shall be maintained of the receipt, external dispatch

and destruction of foreign government Secret information. Other records may be necessary if required by the originator. Secret foreign government information may be reproduced to meet mission requirements unless prohibited by the originator. Reproduction shall be recorded unless this requirement is waived by the originator.

(c) *Confidential.* Records need not be maintained for foreign government Confidential information unless required by the originator.

(d) *Restricted and other foreign government information provided in confidence.* In order to assure the protection of other foreign government information provided in confidence (*e.g.*, foreign government "Restricted," "Designated," or unclassified provided in confidence), such information must be classified under the Order. The receiving agency, or a receiving U.S. contractor, licensee, grantee, or certificate holder acting in accordance with instructions received from the U.S. Government, shall provide a degree of protection to the foreign government information at least equivalent to that required by the government or international organization that provided the information. When adequate to achieve equivalency, these standards may be less restrictive than the safeguarding standards that ordinarily apply to U.S. Confidential information. If the foreign protection requirement is lower than the protection required for U.S. Confidential information, the following requirements shall be met:

(1) Documents may retain their original foreign markings if the responsible agency determines that these markings are adequate to meet the purposes served by U.S. classification markings. Otherwise, documents shall be marked, "This document contains (insert name of country) (insert classification level) information to be treated as U.S. (insert classification level)." The notation, "Modified Handling Authorized," may be added to either the foreign or U.S. markings authorized for foreign government information. If remarking foreign originated documents or matter is impractical, an approved cover sheet is an authorized option;

(2) Documents shall be provided only to persons in accordance with sections 4.1(a) and (h) of the Order;

(3) Individuals being given access shall be notified of applicable handling instructions. This may be accomplished by a briefing, written instructions, or by applying specific handling requirements to an approved cover sheet;

(4) Documents shall be stored in such a manner so as to prevent unauthorized access;

(5) Documents shall be transmitted in a method approved for classified information, unless this method is waived by the originating government.

(e) *Third-country transfers.* The release or disclosure of foreign government information to any third-country entity must have the prior consent of the originating government if required by a treaty, agreement, bilateral exchange, or other obligation.

§ 2001.55 Foreign disclosure of classified information.

Classified information originating in one agency may be disseminated by any other agency to which it has been made available to a foreign government or international organization of governments, or any element thereof, in accordance with statute, the Order, directives implementing the Order, direction of the President, or with the consent of the originating agency, unless the originating agency has determined that prior authorization is required for such dissemination and has marked or indicated such requirement on the medium containing the classified information. Markings used to implement this section shall be approved in accordance with § 2001.24(j). With respect to the Intelligence Community, the Director of National Intelligence may issue policy directives or guidelines pursuant to section 6.2(b) of the Order that modify such prior authorization.

Subpart F—Self-Inspections

§ 2001.60 General.

(a) *Purpose.* This subpart sets standards for establishing and maintaining

an ongoing agency self-inspection program, which shall include regular reviews of representative samples of the agency's original and derivative classification actions.

(b) *Responsibility*. The senior agency official is responsible for directing and administering the agency's self-inspection program. The senior agency official shall designate agency personnel to assist in carrying out this responsibility. The program shall be structured to provide the senior agency official with information necessary to assess the effectiveness of the classified national security information program within individual agency activities and the agency as a whole, in order to enable the senior agency official to fulfill his or her responsibility to oversee the agency's program under section 5.4(d) of the Order.

(c) *Approach*. The senior agency official shall determine the means and methods for the conduct of self-inspections.

(1) Self-inspections should evaluate the adherence to the principles and requirements of the Order and this directive and the effectiveness of agency programs covering original classification, derivative classification, declassification, safeguarding, security violations, security education and training, and management and oversight.

(2) Regular reviews of representative samples of the agency's original and derivative classification actions shall encompass all agency activities that generate classified information. They shall include a sample of varying types of classified information (in document and electronic format such as e-mail) to provide a representative sample of the activity's classification actions. The sample shall be proportionally sufficient to enable a credible assessment of the agency's classified product. Agency personnel who are assigned to conduct reviews of agencies' original and derivative classification actions shall be knowledgeable of the classification and marking requirements of the Order and this directive, and have access to pertinent security classification guides. In accordance with section 5.4(d)(4) of the Order, the senior agency official shall authorize appropriate agency officials to correct misclassification actions.

(3) Self-inspections should include a review of relevant security directives and instructions, as well as interviews with producers and users of classified information.

(d) *Frequency*. Self-inspections shall be regular, ongoing, and conducted at least annually with the senior agency official setting the frequency on the basis of program needs and the degree of classification activity. Activities that generate significant amounts of classified information shall include a representative sample of their original and derivative classification actions.

(e) *Coverage*. The senior agency official shall establish self-inspection coverage requirements based on program and policy needs. Agencies with special access programs shall evaluate those programs in accordance with sections 4.3(b)(2) and (4) of the Order, at least annually.

(f) *Reporting*. Agencies shall document the findings of self-inspections internally.

(1) *Internal*. The senior agency official shall set the format for documenting self-inspection findings. As part of corrective action for findings and other concerns of a systemic nature, refresher security education and training should address the underlying cause(s) of the issue.

(2) *External*. The senior agency official shall report annually to the Director of ISOO on the agency's self-inspection program. This report shall include:

(i) A description of the agency's self-inspection program to include activities assessed, program areas covered, and methodology utilized;

(ii) The assessment and a summary of the findings of the agency self-inspections in the following program areas: Original classification, derivative classification, declassification, safeguarding, security violations, security education and training, and management and oversight;

(iii) Specific information with regard to the findings of the annual review of the agency's original and derivative classification actions to include the volume of classified materials reviewed

and the number and type of discrepancies that were identified;

(iv) Actions that have been taken or are planned to correct identified deficiencies or misclassification actions, and to deter their reoccurrence; and

(v) Best practices that were identified during self-inspections.

Subpart G—Security Education and Training

§ 2001.70 General.

(a) *Purpose*. This subpart sets standards for agency security education and training programs. Implementation of these standards should:

(1) Ensure that all executive branch employees who create, process, or handle classified information have a satisfactory knowledge and understanding of classification, safeguarding, and declassification policies and procedures;

(2) Increase uniformity in the conduct of agency security education and training programs; and

(3) Reduce instances of over-classification or improper classification, improper safeguarding, and inappropriate or inadequate declassification practices.

(b) *Responsibility*. The senior agency official is responsible for the agency's security education and training program. The senior agency official shall designate agency personnel, as necessary, to assist in carrying out this responsibility.

(c) *Approach*. Security education and training should be tailored to meet the specific needs of the agency's security program and the specific roles employees are expected to play in that program. The agency official(s) responsible for the program shall determine the means and methods for providing security education and training. Training methods may include briefings, interactive videos, dissemination of instructional materials, on-line presentations, and other media and methods. Each agency shall maintain records about the programs it has offered and employee participation in them.

(d) *Frequency*. The frequency of agency security education and training will vary in accordance with the needs of the agency's security classification program, subject to the following requirements:

(1) Initial training shall be provided to every person who has met the standards for access to classified information in accordance with section 4.1 of the Order.

(2) Original classification authorities shall receive training in proper classification and declassification prior to originally classifying information and at least once each calendar year thereafter.

(3) Persons who apply derivative classification markings shall receive training in the proper application of the derivative classification principles of the Order prior to derivatively classifying information and at least once every two years.

(4) Each agency shall provide some form of refresher security education and training at least annually for all its personnel who handle or generate classified information.

§ 2001.71 Coverage.

(a) *General*. Each department or agency shall establish and maintain a formal security education and training program which provides for initial training, refresher training, specialized training, and termination briefings. This subpart establishes fundamental security education and training standards for original classification authorities, derivative classifiers, declassification authorities, security managers, classification management officers, security specialists, and all other personnel whose duties significantly involve the creation or handling of classified information. Agency officials responsible for the security education and training programs should determine the specific training to be provided according to the agency's program and policy needs.

(b) *Initial training*. All cleared agency personnel shall receive initial training on basic security policies, principles, practices, and criminal, civil, and administrative penalties. Such training must be provided in conjunction with the granting of a security clearance, and prior to accessing classified information.

(c) *Training for original classification authorities.* Original classification authorities shall be provided detailed training on proper classification and declassification, with an emphasis on the avoidance of over-classification. At a minimum, the training shall cover classification standards, classification levels, classification authority, classification categories, duration of classification, identification and markings, classification prohibitions and limitations, sanctions, classification challenges, security classification guides, and information sharing.

(1) Personnel shall receive this training prior to originally classifying information.

(2) In addition to this initial training, original classification authorities shall receive training in proper classification and declassification at least once each calendar year.

(3) Original classification authorities who do not receive such mandatory training at least once within a calendar year shall have their classification authority suspended until such training has taken place.

(i) An agency head, deputy agency head, or senior agency official may grant a waiver of this requirement if an individual is unable to receive this training due to unavoidable circumstances. All such waivers shall be documented.

(ii) Whenever such a waiver is granted, the individual shall receive the required training as soon as practicable.

(d) *Training for persons who apply derivative classification markings.* Persons who apply derivative classification markings shall receive training in the proper application of the derivative classification principles of the Order, emphasizing the avoidance of over-classification. At a minimum, the training shall cover the principles of derivative classification, classification levels, duration of classification, identification and markings, classification prohibitions and limitations, sanctions, classification challenges, security classification guides, and information sharing.

(1) Personnel shall receive this training prior to derivatively classifying information.

(2) In addition to this preparatory training, derivative classifiers shall receive such training at least once every two years.

(3) Derivative classifiers who do not receive such mandatory training at least once every two years shall have their authority to apply derivative classification markings suspended until they have received such training.

(i) An agency head, deputy agency head, or senior agency official may grant a waiver of this requirement if an individual is unable to receive this training due to unavoidable circumstances. All such waivers shall be documented.

(ii) Whenever such a waiver is granted, the individual shall receive the required training as soon as practicable.

(e) *Other specialized security education and training.* Classification management officers, security managers, security specialists, declassification authorities, and all other personnel whose duties significantly involve the creation or handling of classified information shall receive more detailed or additional training no later than six months after assumption of duties that require other specialized training.

(f) *Annual refresher security education and training.* Agencies shall provide annual refresher training to employees who create, process, or handle classified information. Annual refresher training should reinforce the policies, principles and procedures covered in initial and specialized training. Annual refresher training should also address identification and handling of other agency-originated information and foreign government information, as well as the threat and the techniques employed by foreign intelligence activities attempting to obtain classified information, and advise personnel of penalties for engaging in espionage activities. Annual refresher training should also address issues or concerns identified during agency self-inspections.

(g) *Termination briefings.* Except in extraordinary circumstances, each agency shall ensure that each employee who is granted access to classified information and who leaves the service of the agency receives a termination briefing. Also, each agency employee

whose clearance is withdrawn or revoked must receive such a briefing. At a minimum, termination briefings must impress upon each employee the continuing responsibility not to disclose any classified information to which the employee had access and the potential penalties for non-compliance, and the obligation to return to the appropriate agency official all classified documents and materials in the employee's possession.

(h) *Other security education and training*. Agencies are encouraged to develop additional security education and training according to program and policy needs. Such security education and training could include:

(1) Practices applicable to U.S. officials traveling overseas;

(2) Procedures for protecting classified information processed and stored in automated information systems;

(3) Methods for dealing with uncleared personnel who work in proximity to classified information;

(4) Responsibilities of personnel serving as couriers of classified information; and

(5) Security requirements that govern participation in international programs.

Subpart H—Standard Forms

§ 2001.80 Prescribed standard forms.

(a) *General*. The purpose of the standard forms is to promote the implementation of the government-wide information security program. Standard forms are prescribed when their use will enhance the protection of national security information and/or will reduce the costs associated with its protection. The use of the standard forms prescribed is mandatory for agencies of the executive branch that create or handle national security information. As appropriate, these agencies may mandate the use of these forms by their contractors, licensees, or grantees who are authorized access to national security information.

(b) *Waivers*. Except for the SF 312, "Classified Information Nondisclosure Agreement," and the SF 714, "Financial Disclosure Report," (which are waiverable by the Director of National Intelligence, as the Security Executive Agent, under E.O. 13467, *Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information*) only the Director of ISOO may grant a waiver from the use of the prescribed standard forms. To apply for a waiver, an agency must submit its proposed alternative form to the Director of ISOO along with its justification for use. The Director of ISOO will review the request and notify the agency of the decision. Waivers approved prior to December 29, 2009, remain in effect and are subject to review.

(c) *Availability*. Agencies may obtain copies of the standard forms prescribed by ordering through FEDSTRIP/MILSTRIP or from the GSA Consumer Global Supply Centers, or the GSA Advantage on-line service. Some of these standard forms can be downloaded from the GSA Forms Library.

(d) *Standard Forms*. Standard forms required for application to national security information are as follows.

(1) *SF 311, Agency Security Classification Management Program Data:* The SF 311 is a data collection form completed by only those executive branch agencies that create and/or handle classified national security information. The form is a record of classification management data provided by the agencies. The agencies submit the completed forms on an annual basis to ISOO, no later than November 15 following the reporting period, for inclusion in a report to the President.

(2) *SF 312, Classified Information Nondisclosure Agreement:*

(i) The SF 312 is a nondisclosure agreement between the United States and an employee of the Federal Government or one of its contractors, licensees, or grantees. The prior execution of this form by an individual is necessary before the United States Government may grant that individual access to classified information, with the exception of an emergency as defined in section 4.2(b) of the Order.

(ii) Electronic signatures on SF–312s are prohibited.

(iii) The SF 312 is the current authorized form; if an employee originally signed the now outdated SF 189 or SF 189–A, or a form under an approved

waiver, as agreement to nondisclosure, the forms remain valid. The SF 189 and SF 189–A are no longer available for use with new employees.

(iv) The use of the "Security Debriefing Acknowledgement" portion of the SF 312 is optional at the discretion of the implementing agency. If an agency chooses not to record its debriefing by signing/dating the debriefing section of the SF 312, then the agency shall provide an alternative record.

(v) An authorized representative of a contractor, licensee, grantee, or other non-Government organization, acting as a designated agent of the United States, may witness the execution of the SF 312 by another non-Government employee, and may accept it on behalf of the United States. Also, an employee of a United States agency may witness the execution of the SF 312 by an employee, contractor, licensee, or grantee of another United States agency, provided that an authorized United States Government official or, for non-Government employees only, a designated agent of the United States subsequently accepts by signature the SF 312 on behalf of the United States.

(vi) The provisions of the SF 312, the SF 189, and the SF 189–A do not supersede the provisions of 5 U.S.C. 2302, which pertain to the protected disclosure of information by Government employees, or any other laws of the United States.

(vii) Each agency must retain its executed copies of the SF 312, SF 189, and SF 189–A in file systems from which an agreement can be expeditiously retrieved in the event that the United States must seek its enforcement or a subsequent employer must confirm its prior execution. The original, or a legally enforceable facsimile that is retained in lieu of the original, such as microfiche, microfilm, computer disk, or electronic storage medium, must be retained for 50 years following its date of execution. For agreements executed by civilian employees of the United States Government, an agency may store the executed copy of the SF 312 and SF 189 in the United States Office of Personnel Management's Official Personnel Folder as a long-term (right side) document for that employee. An agency may permit its contractors, licensees, and grantees to retain the executed agreements of their employees during the time of employment. Upon the termination of employment, the contractors, licensee, or grantee shall deliver the original or legally enforceable facsimile of the executed SF 312, SF 189, or SF 189–A of that employee to the Government agency primarily responsible for his or her classified work. A contractor, licensee, or grantee of an agency participating in the National Industrial Security Program shall provide the copy or legally enforceable facsimile of the executed SF 312, SF 189, or SF 189–A of a terminated employee to their cognizant security office. Each agency shall inform ISOO of the file systems that it uses to store these agreements for each category of affected individuals.

(viii) Only the Director of National Intelligence, as the Security Executive Agent, may grant an agency's request for a waiver from the use of the SF 312. To apply for a waiver, an agency must submit its proposed alternative nondisclosure agreement to the Director of the Special Security Center (SSC), Office of the Director of National Intelligence, along with a justification for its use. The Director, SSC, shall request a determination about the alternative agreement's enforceability from the Department of Justice.

(ix) The national stock number for the SF 312 is 7540–01–280–5499.

(3) *SF 700, Security Container Information:* The SF 700 provides the names, addresses, and telephone numbers of employees who are to be contacted if the security container to which the form pertains is found open and unattended. The form also includes the means to maintain a current record of the security container's combination and provides the envelope to be used to forward this information to the appropriate agency activity or official. If an agency determines, as part of its risk management strategy, that a security container information form is required, the SF 700 shall be used. Parts 2 and 2A of each completed copy of SF 700 shall be classified at the highest level of classification of the information authorized for storage in the security container. A new SF 700 must be completed each time the combination to

the security container is changed. The national stock number for the SF 700 is 7540–01–214–5372.

(4) *SF 701, Activity Security Checklist:* The SF 701 provides a systematic means to make a thorough end-of-day security inspection for a particular work area and to allow for employee accountability in the event that irregularities are discovered. If an agency determines, as part of its risk management strategy, that an activity security checklist is required, the SF 701 will be used. Completion, storage, and disposition of SF 701 will be in accordance with each agency's security regulations. The national stock number for the SF 701 is 7540–01–213–7899.

(5) *SF 702, Security Container Check Sheet:* The SF 702 provides a record of the names and times that persons have opened, closed, or checked a particular container that holds classified information. If an agency determines, as part of its risk management strategy, that a security container check sheet is required, the SF 702 will be used. Completion, storage, and disposal of the SF 702 will be in accordance with each agency's security regulations. The national stock number of the SF 702 is 7540–01–213–7900.

(6) *SF 703, TOP SECRET Cover Sheet:* The SF 703 serves as a shield to protect Top Secret classified information from inadvertent disclosure and to alert observers that Top Secret information is attached to it. If an agency determines, as part of its risk management strategy, that a TOP SECRET cover sheet is required, the SF 703 will be used. The SF 703 is affixed to the top of the Top Secret document and remains attached until the document is downgraded, requiring the appropriate classification level cover sheet, declassified, or destroyed. When the SF 703 has been appropriately removed, it may, depending upon its condition, be reused. The national stock number of the SF 703 is 7540–01–213–7901.

(7) *SF 704, SECRET Cover Sheet:* The SF 704 serves as a shield to protect Secret classified information from inadvertent disclosure and to alert observers that Secret information is attached to it. If an agency determines, as part of its risk management strategy, that a SECRET cover sheet is required, the SF 704 will be used. The SF 704 is affixed to the top of the Secret document and remains attached until the document is downgraded, requiring the appropriate classification level cover sheet, declassified, or destroyed. When the SF 704 has been appropriately removed, it may, depending upon its condition, be reused. The national stock number of the SF 704 is 7540–01–213–7902.

(8) *SF 705, CONFIDENTIAL Cover Sheet:* The SF 705 serves as a shield to protect Confidential classified information from inadvertent disclosure and to alert observers that Confidential information is attached to it. If an agency determines, as part of its risk management strategy, that a CONFIDENTIAL cover sheet is required, the SF 705 will be used. The SF 705 is affixed to the top of the Confidential document and remains attached until the document is destroyed. When the SF 705 has been appropriately removed, it may, depending upon its condition, be reused. The national stock number of the SF 704 is 7540–01–213–7903.

(9) *SF 706, TOP SECRET Label:* The SF 706 is used to identify and protect electronic media and other media that contain Top Secret information. The SF 706 is used instead of the SF 703 for media other than documents. If an agency determines, as part of its risk management strategy, that a TOP SECRET label is required, the SF 706 will be used. The SF 706 is affixed to the medium containing Top Secret information in a manner that would not adversely affect operation of equipment in which the medium is used. Once the label has been applied, it cannot be removed. The national stock number of the SF 706 is 7540–01–207–5536.

(10) *SF 707, SECRET Label:* The SF 707 is used to identify and protect electronic media and other media that contain Secret information. The SF 707 is used instead of the SF 704 for media other than documents. If an agency determines, as part of its risk management strategy, that a SECRET label is required, the SF 707 will be used. The SF 707 is affixed to the medium containing Secret information in a manner that would not adversely affect operation of equipment in which the medium is used. Once the label has been

applied, it cannot be removed. The national stock number of the SF 707 is 7540–01–207–5537.

(11) *SF 708, CONFIDENTIAL Label:* The SF 708 is used to identify and protect electronic media and other media that contain Confidential information. The SF 708 is used instead of the SF 705 for media other than documents. If an agency determines, as part of its risk management strategy, that a CONFIDENTIAL label is required, the SF 708 will be used. The SF 708 is affixed to the medium containing Confidential information in a manner that would not adversely affect operation of equipment in which the medium is used. Once the label has been applied, it cannot be removed. The national stock number of the SF 708 is 7540–01–207–5538.

(12) *SF 709, CLASSIFIED Label:* The SF 709 is used to identify and protect electronic media and other media that contain classified information pending a determination by the classifier of the specific classification level of the information. If an agency determines, as part of its risk management strategy, that a CLASSIFIED label is required, the SF 709 will be used. The SF 709 is affixed to the medium containing classified information in a manner that would not adversely affect operation of equipment in which the medium is used. Once the label has been applied, it cannot be removed. When a classifier has made a determination of the specific level of classification of the information contained on the medium, either the SF 706, SF 707, or SF 708 shall be affixed on top of the SF 709 so that only the SF 706, SF 707, or SF 708 is visible. The national stock number of the SF 709 is 7540–01–207–5540.

(13) *SF 710, UNCLASSIFIED Label:* In a mixed environment in which classified and unclassified information are being processed or stored, the SF 710 is used to identify electronic media and other media that contain unclassified information. Its function is to aid in distinguishing among those media that contain either classified or unclassified information in a mixed environment. If an agency determines, as part of its risk management strategy, that an UNCLASSIFIED label is required, the SF 710 will be used. The SF 710 is affixed to the medium containing unclassified information in a manner that would not adversely affect operation of equipment in which the medium is used. Once the label has been applied, it cannot be removed. However, the label is small enough so that it can be wholly covered by a SF 706, SF 707, SF 708, or SF 709 if the medium subsequently contains classified information. The national stock number of the SF 710 is 7540–01–207–5539.

(14) *SF 711, DATA DESCRIPTOR Label:* The SF 711 is used to identify additional safeguarding controls that pertain to classified information that is stored or contained on electronic or other media. If an agency determines, as part of its risk management strategy, that a DATA DESCRIPTOR label is required, the SF 711 will be used. The SF 711 is affixed to the electronic medium containing classified information in a manner that would not adversely affect operation of equipment in which the medium is used. The SF 711 is ordinarily used in conjunction with the SF 706, SF 707, SF 708, or SF 709, as appropriate. Once the label has been applied, it cannot be removed. The SF 711 provides spaces for information that should be completed as required. The national stock number of the SF 711 is 7540–01–207–5541.

(15) *SF 714, Financial Disclosure Report:* When required by an agency head or by the Director of National Intelligence, as the Security Executive Agent, the SF 714 contains information that is used to make personnel security determinations, including whether to grant a security clearance; to allow access to classified information, sensitive areas, and equipment; or to permit assignment to sensitive national security positions. The data may later be used as a part of a review process to evaluate continued eligibility for access to classified information or as evidence in legal proceedings. The SF 714 assists law enforcement agencies in obtaining pertinent information in the preliminary stages of potential espionage and counter terrorism cases.

(16) *SF 715, Government Declassification Review Tab:* The SF 715 is used to record the status of classified national security information reviewed for declassification. The SF 715 shall be used in all situations that call for the use of

a tab as part of the processing of records determined to be of permanent historical value. The national stock number for the SF 715 is 7540–01–537–4689.

Subpart I—Reporting and Definitions

§ 2001.90 Agency annual reporting requirements.

(a) *Delegations of original classification authority.* Agencies shall report delegations of original classification authority to ISOO annually in accordance with section 1.3(c) of the Order and § 2001.11(c).

(b) *Statistical reporting.* Each agency that creates or safeguards classified information shall report annually to the Director of ISOO statistics related to its security classification program. The Director will instruct agencies what data elements are required, and how and when they are to be reported.

(c) *Accounting for costs.*

(1) Information on the costs associated with the implementation of the Order will be collected from the agencies. The agencies will provide data to ISOO on the cost estimates for classification-related activities. ISOO will report these cost estimates annually to the President. The agency senior official should work closely with the agency comptroller to ensure that the best estimates are collected.

(2) The Secretary of Defense, acting as the executive agent for the National Industrial Security Program under E.O.12829, as amended, *National Industrial Security Program,* and consistent with agreements entered into under section 202 of E.O. 12989, as amended, will collect cost estimates for classification-related activities of contractors, licensees, certificate holders, and grantees, and report them to ISOO annually. ISOO will report these cost estimates annually to the President.

(d) *Self-Inspections.* Agencies shall report annually to the Director of ISOO as required by section 5.4(d)(4) of the Order and outlined in § 2001.60(f).

§ 2001.91 Other agency reporting requirements.

(a) *Information declassified without proper authority.* Determinations that classified information has been declassified without proper authority shall be promptly reported in writing to the Director of ISOO in accordance with § 2001.13(a).

(b) *Reclassification actions.* Reclassification of information that has been declassified and released under proper authority shall be reported promptly to the National Security Advisor and the Director of ISOO in accordance with section 1.7(c)(3) of the Order and § 2001.13(b).

(c) *Fundamental classification guidance review.* The initial fundamental guidance review is to be completed no later than June 27, 2012. Agency heads shall provide a detailed report summarizing the results of each classification guidance review to ISOO and release an unclassified version to the public in accordance with section 1.9 of the Order and § 2001.16(d).

(d) *Violations of the Order.* Agency heads or senior agency officials shall notify the Director of ISOO when a violation occurs under sections 5.5(b)(1), (2), or (3) of the Order and § 2001.48(d).

§ 2001.92 Definitions.

(a) *Accessioned records* means records of permanent historical value in the legal custody of NARA.

(b) *Authorized person* means a person who has a favorable determination of eligibility for access to classified information, has signed an approved nondisclosure agreement, and has a need-to-know.

(c) *Classification management* means the life-cycle management of classified national security information from original classification to declassification.

(d) *Cleared commercial carrier* means a carrier that is authorized by law, regulatory body, or regulation, to transport Secret and Confidential material and has been granted a Secret facility clearance in accordance with the National Industrial Security Program.

(e) *Control* means the authority of the agency that originates information, or its successor in function, to regulate access to the information.

(f) *Employee* means a person, other than the President and Vice President, employed by, detailed or assigned to, an agency, including members of the

Armed Forces; an expert or consultant to an agency; an industrial or commercial contractor, licensee, certificate holder, or grantee of an agency, including all subcontractors; a personal services contractor; or any other category of person who acts for or on behalf of an agency as determined by the appropriate agency head.

(g) *Equity* refers to information:

(1) Originally classified by or under the control of an agency;

(2) In the possession of the receiving agency in the event of transfer of function; or

(3) In the possession of a successor agency for an agency that has ceased to exist.

(h) *Exempted* means nomenclature and markings indicating information has been determined to fall within an enumerated exemption from automatic declassification under the Order.

(i) *Facility* means an activity of an agency authorized by appropriate authority to conduct classified operations or to perform classified work.

(j) *Federal record* includes all books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them. Library and museum material made or acquired and preserved solely for reference, and stocks of publications and processed documents are not included. (44 U.S.C. 3301)

(k) *Newly discovered records* means records that were inadvertently not reviewed prior to the effective date of automatic declassification because the appropriate agency personnel were unaware of their existence.

(l) *Open storage area* means an area constructed in accordance with § 2001.53 of this part and authorized by the agency head for open storage of classified information.

(m) *Original classification authority with jurisdiction over the information* includes:

(1) The official who authorized the original classification, if that official is still serving in the same position;

(2) The originator's current successor in function;

(3) A supervisory official of either; or

(4) The senior agency official under the Order.

(n) *Permanent records* means any Federal record that has been determined by the National Archives to have sufficient value to warrant its preservation in the National Archives. Permanent records include all records accessioned by the National Archives into the National Archives and later increments of the same records, and those for which the disposition is permanent on SF 115s, Request for Records Disposition Authority, approved by the National Archives on or after May 14, 1973.

(o) *Permanently valuable information* or *permanent historical value* refers to information contained in:

(1) Records that have been accessioned by the National Archives;

(2) Records that have been scheduled as permanent under a records disposition schedule approved by the National Archives; and

(3) Presidential historical materials, presidential records or donated historical materials located in the National Archives, a presidential library, or any other approved repository.

(p) *Presidential papers, historical materials, and records* means the papers or records of the former Presidents under the legal control of the Archivist pursuant to sections 2111, 2111 note, or 2203 of title 44, U.S.C.

(q) *Redaction* means the removal of classified information from copies of a document such that recovery of the information on the copy is not possible using any reasonably known technique or analysis.

(r) *Risk management principles* means the principles applied for assessing threats and vulnerabilities and implementing security countermeasures while maximizing the sharing of information to achieve an acceptable level of risk at an acceptable cost.

(s) *Security-in-depth* means a determination by the agency head that a facility's security program consists of layered and complementary security controls sufficient to deter and detect unauthorized entry and movement within the facility. Examples include, but are not limited to, use of perimeter fences, employee and visitor access controls, use of an Intrusion Detection System (IDS), random guard patrols throughout the facility during nonworking hours, closed circuit video monitoring or other safeguards that mitigate the vulnerability of open storage areas without alarms and security storage cabinets during nonworking hours.

(t) *Supplemental controls* means prescribed procedures or systems that provide security control measures designed to augment the physical protection of classified information. Examples of supplemental controls include intrusion detection systems, periodic inspections of security containers or areas, and security-in-depth.

(u) *Temporary records* means Federal records approved by NARA for disposal, either immediately or after a specified retention period. Also called *disposable records*.

(v) *Transclassification* means information that has been removed from the Restricted Data category in order to carry out provisions of the National Security Act of 1947, as amended, and safeguarded under applicable Executive orders as "National Security Information."

(w) *Unscheduled records* means Federal records whose final disposition has not been approved by NARA. All records that fall under a NARA approved records control schedule are considered to be scheduled records.

PART 2003 [RESERVED]

PART 2004—NATIONAL INDUSTRIAL SECURITY PROGRAM DIRECTIVE NO. 1

Subpart A—Implementation and Oversight

Sec.
2004.5 Definitions.
2004.10 Responsibilities of the Director, Information Security Oversight Office (ISOO) [102(b)].
2004.11 Agency Implementing Regulations, Internal Rules, or Guidelines [102(b)(3)].
2004.12 Reviews by ISOO [102(b)(4)].

Subpart B—Operations

2004.20 National Industrial Security Program Operating Manual (NISPOM) [201(a)].
2004.21 Protection of Classified Information [201(e)].
2004.22 Operational Responsibilities [202(a)].
2004.23 Cost Reports [203(d)].
2004.24 Definitions.

AUTHORITY: Executive Order 12829, January 6, 1993, 58 FR 3479, as amended by Executive Order 12885, December 14, 1993, 58 FR 65863.

SOURCE: 71 FR 18007, Apr. 10, 2006, unless otherwise noted.

Subpart A—Implementation and Oversight

§ 2004.5 Definitions.

(a) "Cognizant Security Agencies (CSAs)" means the Executive Branch departments and agencies authorized in EO 12829, as amended, to establish industrial security programs: The Department of Defense, designated as the Executive Agent; the Department of Energy; the Nuclear Regulatory Commission; and the Central Intelligence Agency.

(b) "Cognizant Security Office (CSO)" means the organizational entity delegated by the Head of a CSA to administer industrial security on behalf of the CSA.

(c) "Contractor" means any industrial, education, commercial, or other entity, to include licensees or grantees that has been granted access to classified information. Contractor does not include individuals engaged under personal services contracts.

(d) "National Interest Determination (NID)" means a determination that access to proscribed information is consistent with the national security interests of the United States.

(e) "Proscribed information" means Top Secret; Communications Security, except classified keys used for data

transfer; Restricted Data; Special Access Program; or Sensitive Compartmented Information.

[71 FR 18007, Apr. 10, 2006. Redesignated and amended at 75 FR 17306, Apr. 6, 2010]

§ 2004.10 Responsibilities of the Director, Information Security Oversight Office (ISOO) [102(b)].[1]

The Director ISOO shall:

(a) Implement EO 12829, as amended.

(b) Ensure that the NISP is operated as a single, integrated program across the Executive Branch of the Federal Government; i.e., that the Executive Branch departments and agencies adhere to NISP principles.

(c) Ensure that each contractor's implementation of the NISP is overseen by a single Cognizant Security Authority (CSA), based on a preponderance of classified contracts per agreement by the CSAs.

(d) Ensure that all Executive Branch departments and agencies that contract for classified work have included the Security Requirements clause, 52.204–2, from the Federal Acquisition Regulation (FAR), or an equivalent clause, in such contract.

(e) Ensure that those Executive Branch departments and agencies for which the Department of Defense (DoD) serves as the CSA have entered into agreements with the DoD that establish the terms of the Secretary's responsibilities on behalf of those agency heads.

§ 2004.11 Agency Implementing Regulations, Internal Rules, or Guidelines [102(b)(3)].

(a) *Reviews and Updates*. All implementing regulations, internal rules, or guidelines that pertain to the NISP shall be reviewed and updated by the originating agency, as circumstances require. If a change in national policy necessitates a change in agency implementing regulations, internal rules, or guidelines that pertain to the NISP, the agency shall promptly issue revisions.

(b) *Reviews by ISOO*. The Director, ISOO, shall review agency implementing regulations, internal rules, or guidelines, as necessary, to ensure consistency with NISP policies and procedures. Such reviews should normally occur during routine oversight visits, when there is indication of a problem that comes to the attention of the Director, ISOO, or after a change in national policy that impacts such regulations, rules, or guidelines. The Director, ISOO, shall provide findings from such reviews to the responsible department or agency.

§ 2004.12 Reviews by ISOO [102(b)(4)].

The Director, ISOO, shall fulfill his monitoring role based, in part, on information received from NISP Policy Advisory Committee (NISPPAC) members, from on-site reviews that ISOO conducts under the authority of EO 12829, as amended, and from complaints and suggestions from persons within or outside the Government. Findings shall be reported to the responsible department or agency.

Subpart B—Operations

§ 2004.20 National Industrial Security Program Operating Manual (NISPOM) [201(a)].

(a) The NISPOM applies to release of classified information during all phases of the contracting process.

(b) As a general rule, procedures for safeguarding classified information by contractors and recommendations for changes shall be addressed through the NISPOM coordination process that shall be facilitated by the Executive Agent. The Executive Agent shall address NISPOM issues that surface from industry, Executive Branch departments and agencies, or the NISPPAC. When consensus cannot be achieved through the NISPOM coordination process, the issue shall be raised to the NSC for resolution.

§ 2004.21 Protection of Classified Information [201(e)].

Procedures for the safeguarding of classified information by contractors are promulgated in the NISPOM. DoD, as the Executive Agent, shall use standards applicable to agencies as the basis for the requirements, restrictions, and safeguards contained in the

[1] Bracketed references pertain to related sections of Executive Order 12829, as amended by E.O. 12885.

NISPOM; however, the NISPOM requirements may be designed to accommodate as necessary the unique circumstances of industry. Any issue pertaining to deviation of industry requirements in the NISPOM from the standards applicable to agencies shall be addressed through the NISPOM coordination process.

§ 2004.22 Operational Responsibilities [202(a)].

(a) *Designation of Cognizant Security Authority (CSA)*. The CSA for a contractor shall be determined by the preponderance of classified contract activity per agreement by the CSAs. The responsible CSA shall conduct oversight inspections of contractor security programs and provide other support services to contractors as necessary to ensure compliance with the NISPOM and that contractors are protecting classified information as required. DoD, as Executive Agent, shall serve as the CSA for all Executive Branch departments and agencies that are not a designated CSA. As such, DoD shall:

(1) Provide training to industry to ensure that industry understands the responsibilities associated with protecting classified information.

(2) Validate the need for contractor access to classified information, shall establish a system to request personnel security investigations for contractor personnel, and shall ensure adequate funding for investigations of those contractors under Department of Defense cognizance.

(3) Maintain a system of eligibility and access determinations of contractor personnel.

(b) *General Responsibilities*. Executive Branch departments and agencies that issue contracts requiring industry to have access to classified information and are not a designated CSA shall:

(1) Include the Security Requirements clause, 52.204–2, from the FAR in such contracts;

(2) Incorporate a Contract Security Classification Specification (DD 254) into the contracts in accordance with the FAR subpart 4.4;

(3) Sign agreements with the Department of Defense as the Executive Agent for industrial security services; and,

(4) Ensure applicable department and agency personnel having NISP implementation responsibilities are provided appropriate education and training.

(c) *National Interest Determinations (NIDs)*. Executive branch departments and agencies shall make a National Interest Determination (NID) before authorizing contractors, cleared or in process for clearance under a Special Security Agreement (SSA), to have access to proscribed information. To make a NID, the agency shall assess whether release of the proscribed information is consistent with the national security interests of the United States.

(1) The requirement for a NID applies to new contracts, including pre-contract activities in which access to proscribed information is required, and to existing contracts when contractors are acquired by foreign interests and an SSA is the proposed foreign ownership, control, or influence mitigation method.

(i) If access to proscribed information is required to complete pre-contract award actions or to perform on a new contract, the Government Contracting Activity (GCA) shall determine if release of the information is consistent with national security interests.

(ii) For contractors that have existing contracts that require access to proscribed information, have been or are in the process of being acquired by foreign interests, and have proposed an SSA to mitigate foreign ownership, the Cognizant Security Agency (CSA), or when delegated, the Cognizant Security Office (CSO) shall notify the GCA of the need for a NID.

(iii) The GCA(s) shall determine, within 30 days, per § 2004.22(c)(4)(i), or 60 days, per § 2004.22(c)(4)(ii), whether release of the proscribed information is consistent with national security interests unless the GCA requires additional time for the NID process due to special circumstances. The GCA shall formally advise the CSA, if special circumstances apply.

(2) In accordance with 10 U.S.C. 2536, DoD and the Department of Energy (DOE) cannot award a contract involving access to proscribed information to a contractor effectively owned or controlled by a foreign government unless

a waiver has been issued by the Secretary of Defense or Secretary of Energy.

(3) NIDs may be program-, project-, or contract-specific. For program and project NIDs, a separate NID is not required for each contract. The CSO may require the GCA to identify all contracts covered by the NID. NID decisions shall be made by officials as specified by CSA policy or as designated by the agency head.

(4) NID decisions shall be made within 30 days.

(i) Where no interagency coordination is required because the department or agency owns or controls all of the proscribed information in question, the GCA shall provide a final documented decision to the applicable CSO, with a copy to the contractor, within 30 days of the date of the request for the NID.

(ii) If the proscribed information is owned by, or under the control of, a department or agency other than the GCA (e.g., National Security Agency (NSA) for Communications Security, the Office of the Director of National Intelligence (ODNI) for Sensitive Compartmented Information, and DOE for Restricted Data), the GCA shall provide written notice to that department or agency that its written concurrence is required. Such notice shall be provided within 30 days of being informed by the CSO of the requirement for a NID. The GCA shall provide a final documented decision to the applicable CSO, with a copy to the contractor, within 60 days of the date of the request for the NID.

(iii) If the NID decision is not provided within 30 days, per § 2004.22(c)(4)(i), or 60 days, per § 2004.22(c)(4)(ii), the CSA shall intercede to request the GCA to provide a decision. In such instances, the GCA, in addition to formally notifying the CSA of the special circumstances, per § 2004.22(c)(1)(iii), will provide the CSA or its designee with updates at 30-day intervals. The CSA, or its designee, will, in turn, provide the contractor with updates at 30-day intervals until the NID decision is made.

(5) The CSO shall not delay implementation of an SSA pending completion of a GCA's NID processing, provided there is no indication that a NID will be denied either by the GCA or the owner of the information (i.e., NSA, DOE, or ODNI). However, the contractor shall not have access to additional proscribed information under a new contract until the GCA determines that the release of the information is consistent with national security interests and issues a NID.

(6) The CSO shall not upgrade an existing contractor clearance under an SSA to Top Secret unless an approved NID covering the prospective Top Secret access has been issued.

[71 FR 18007, Apr. 10, 2006 as amended at 75 FR 17306, Apr. 6, 2010]

§ 2004.23 Cost Reports [203(d)].

(a) The Executive Branch departments and agencies shall provide information each year to the Director, ISOO, on the costs within the agency associated with implementation of the NISP for the previous year.

(b) The DoD as the Executive Agent shall develop a cost methodology in coordination with industry to collect the costs incurred by contractors of all Executive Branch departments and agencies to implement the NISP, and shall report those costs to the Director, ISOO, on an annual basis.

CHAPTER XXI—NATIONAL SECURITY COUNCIL

Part		*Page*
2102	Rules and regulations to implement the Privacy Act of 1974	549
2103	Regulations to implement E.O. 12065—including procedures for public access to documents that may be declassified	552

PART 2102—RULES AND REGULATIONS TO IMPLEMENT THE PRIVACY ACT OF 1974

Sec.
2102.1 Introduction.
2102.2 Purpose and scope.
2102.3 Definitions.
2102.4 Procedures for determining if an individual is the subject of a record.
2102.13 Requirements for access to a record.
2102.15 Requirements for requests to amend records.
2102.21 Procedures for appeal of determination to deny access to or amendment of requested records.
2102.31 Disclosure of a record to persons other than the individual to whom it pertains.
2102.41 Fees.
2102.51 Penalties.
2102.61 Exemptions.

AUTHORITY: 5 U.S.C. 552a (f) and (k).

SOURCE: 40 FR 47746, Oct. 9, 1975, unless otherwise noted.

§ 2102.1 Introduction.

(a) Insofar as the Privacy Act of 1974 (5 U.S.C. 552a) applies to the National Security Council (hereafter NSC), it provides the American public with expanded opportunities to gain access to records maintained by the NSC Staff which may pertain to them as individuals. These regulations are the exclusive means by which individuals may request personally identifiable records and information from the National Security Council.

(b) The NSC Staff, in addition to performing the functions prescribed in the National Security Act of 1947, as amended (50 U.S.C. 401), also serves as the supporting staff to the President in the conduct of foreign affairs. In doing so the NSC Staff is acting not as an agency but as an extension of the White House Office. In that the White House Office is not considered an agency for the purposes of this Act, the materials which are used by NSC Staff personnel in their role as supporting staff to the President are not subject to the provisions of the Privacy Act of 1974. A description of these White House Office files is, nevertheless, appended to the NSC notices of systems of files and will be published annually in the FEDERAL REGISTER.

(c) In general, Records in NSC files pertain to individual members of the public only if these individuals have been (1) employed by the NSC, (2) have corresponded on a foreign policy matter with a member of the NSC or its staff, or (3) have, as a U.S. Government official, participated in an NSC meeting or in the preparation of foreign policy-related documents for the NSC.

§ 2102.2 Purpose and scope.

(a) The following regulations set forth procedures whereby individuals may seek and gain access to records concerning themselves and will guide the NSC Staff response to requests under the Privacy Act. In addition, they outline the requirements applicable to the personnel maintaining NSC systems of records.

(b) These regulations, published pursuant to the Privacy Act of 1974, Pub. L. 93–579, Section 552a (f) and (k), 5 U.S.C. (hereinafter the Act), advise of procedures whereby an individual can:

(1) Request notification of whether the NSC Staff maintains or has disclosed a record pertaining to him or her in any non-exempt system of records;

(2) Request a copy of such record or an accounting of that disclosure;

(3) Request an amendment to a record; and,

(4) Appeal any initial adverse determination of any request under the Act.

(c) These regulations also specify those systems of records which the NSC has determined to be exempt from certain provisions of the Act and thus not subject to procedures established by this regulation.

§ 2102.3 Definitions.

As used in these regulations:

(a) *Individual*. A citizen of the United States or an alien lawfully admitted for permanent residence.

(b) *Maintain*. Includes maintain, collect, use or disseminate. Under the Act it is also used to connote control over, and, therefore, responsibility for, systems of records in support of the NSC statutory function (50 U.S.C. 401, *et seq.*).

(c) *Systems of Records*. A grouping of any records maintained by the NSC from which information is retrieved by

the name of the individual or by some other identifying particular assigned to the individual.

(d) *Determination*. Any decision made by the NSC or designated official thereof which affects the individual's rights, opportunities, benefits, etc. and which is based in whole or in part on information contained in that individual's record.

(e) *Routine Use*. With respect to the disclosure of a record, the use of such a record in a manner which is compatible with the purpose for which it was collected.

(f) *Disclosure*. The granting of access or transfer of a record by any means.

§ 2102.4 Procedures for determining if an individual is the subject of a record.

(a) Individuals desiring to determine if they are the subject of a record or system of records maintained by the NSC Staff should address their inquiries, marking them plainly as a *PRIVACY ACT REQUEST*, to:

Staff Secretary, National Security Council, Room 374, Old Executive Office Building, Washington, DC 20506.

All requests must be made in writing and should contain:

(1) A specific reference to the system of records maintained by the NSC as listed in the NSC Notices of Systems and Records (copies available upon request); or

(2) A description of the record or systems of records in sufficient detail to allow the NSC to determine whether the record does, in fact, exist in an NSC system of records.

(b) All requests must contain the printed or typewritten name of the individual to whom the record pertains, the signature of the individual making the request, and the address to which the reply should be sent. In instances when the identification is insufficient to insure disclosure to the individual to whom the information pertains in view of the sensitivity of the information, NSC reserves the right to solicit from the requestor additional identifying information.

(c) Responses to all requests under the Act will be made by the Staff Secretary, or by another designated member of the NSC Staff authorized to act in the name of the Staff Secretary in responding to a request under this Act. Every effort will be made to inform the requestor if he or she is the subject of a specific record or system of records within ten working days (excluding Saturdays, Sundays and legal Federal Holidays) of receipt of the request. Such a response will also contain the procedures to be followed in order to gain access to any record which may exist and a copy of the most recent NSC notice, as published in the FEDERAL REGISTER, on the system of records in which the record is contained.

(d) Whenever it is not possible to respond in the time period specified above, the NSC Staff Secretary or a designated alternate will, within ten working days (excluding Saturdays, Sundays and legal Federal Holidays), inform the requestor of the reasons for the delay (e.g., insufficient requestor information, difficulties in record location, etc.), steps that need to be taken in order to expedite the request, and the date by which a response is anticipated.

§ 2102.13 Requirements for access to a record.

(a) Individuals requesting access to a record or system of records in which there is information concerning them must address a request in writing to the Staff Secretary of the NSC (see § 2102.1). Due to restricted access to NSC offices in the Old Executive Office Building where the files are located, requests cannot be made in person.

(b) All written requests should contain a concise description of the records to which access is requested. In addition, the requestor should include any other information which he or she feels would assist in the timely identification of the record. Verification of the requestor's identity will be determined under the same procedures used in requests for learning of the existence of a record.

(c) To the extent possible, any request for access will be answered by the Staff Secretary or a designated alternate within ten working days (excluding Saturdays, Sundays, and legal Federal holidays) of the receipt of the

request. In the event that a response cannot be made within this time, the requestor will be notified by mail of the reasons for the delay and the date upon which a reply can be expected.

(d) The NSC response will forward a copy of the requested materials unless further identification or clarification of the request is required. In the event access is denied, the requestor shall be informed of the reasons therefore and the name and address of the individual to whom an appeal should be directed.

§ 2102.15 Requirements for requests to amend records.

(a) Individuals wishing to amend a record contained in the NSC systems of records pertaining to them must submit a request in writing to the Staff Secretary of the NSC in accordance with the procedures set forth herein.

(b) All requests for amendment or correction of a record must state concisely the reason for requesting the amendment. Such requests should include a brief statement which describes the information the requestor believes to be inaccurate, incomplete, or unnecessary and the amendment or correction desired.

(c) To the extent possible, every request for amendment of a record will be answered within ten working days (excluding Saturdays, Sundays, and legal Federal holidays) of the receipt of the request. In the event that a response cannot be made within this time, the requestor will be notified by mail of the reasons for the delay and the date upon which a reply can be expected. A final response to a request for amendment will include the NSC Staff determination on whether to grant or deny the request. If the request is denied, the response will include:

(1) The reasons for the decision;

(2) The name and address of the individual to whom an appeal should be directed;

(3) A description of the process for review of the appeal within the NSC; and

(4) A description of any other procedures which may be required of the individual in order to process the appeal.

§ 2102.21 Procedures for appeal of determination to deny access to or amendment of requested records.

(a) Individuals wishing to appeal an NSC Staff denial of a request for access or to amend a record concerning them must address a letter of appeal to the Staff Secretary of the NSC. The letter must be received within thirty days from the date of the Staff Secretary's notice of denial and, at a minimum, should identify the following:

(1) The records involved;

(2) The dates of the initial request and subsequent NSC determination; and

(3) A brief statement of the reasons supporting the request for reversal of the adverse determination.

(b) Within thirty working days (excluding Saturdays, Sundays and legal Federal holidays) of the date of receipt of the letter of appeal, the Assistant to the President for National Security Affairs (hereinafter the "Assistant"), or the Deputy Assistant to the President for National Security Affairs (hereinafter the "Deputy Assistant"), acting in his name, shall issue a determination on the appeal. In the event that a final determination cannot be made within this time period, the requestor will be informed of the delay, the reasons therefor and the date on which a final response is expected.

(c) If the original request was for access and the initial determination is reversed, a copy of the records sought will be sent to the individual. If the initial determination is upheld, the requestor will be so advised and informed of the right to judicial review pursuant to 5 U.S.C. 552a(g).

(d) If the initial denial of a request to amend a record is reversed, the records will be corrected and a copy of the amended record will be sent to the individual. In the event the original decision is upheld by the Assistant to the President, the requestor will be so advised and informed in writing of his or her right to seek judicial review of the final agency determination, pursuant to section 552a(g) of title 5, U.S.C. In addition, the requestor will be advised of his right to have a concise statement of the reasons for disagreeing with the final determination appended to the disputed records. This statement

should be mailed to the Staff Secretary within ten working days (excluding Saturdays, Sundays, and legal Federal Holidays) of the date of the requestor's receipt of the final determination.

§ 2102.31 Disclosure of a record to persons other than the individual to whom it pertains.

(a) Except as provided by the Privacy Act, 5 U.S.C. 552a(b), the NSC will not disclose a record concerning an individual to another person or agency without the prior written consent of the individual to whom the record pertains.

§ 2102.41 Fees.

(a) Individuals will not be charged for:

(1) The first copy of any record provided in response to a request for access or amendment;

(2) The search for, or review of, records in NSC files;

(3) Any copies reproduced as a necessary part of making a record or portion thereof available to the individual.

(b) After the first copy has been provided, records will be reproduced at the rate of twenty-five cents per page for all copying of four pages or more.

(c) The Staff Secretary may provide copies of a record at no charge if it is determined to be in the interest of the Government.

(d) The Staff Secretary may require that all fees be paid in full prior to the issuance of the requested copies.

(e) Remittances shall be in the form of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the "United States Treasury" and mailed to the Staff Secretary, National Security Council, Washington, DC 20506.

(f) A receipt for fees paid will be given only upon request. Refund of fees paid for services actually rendered will not be made.

§ 2102.51 Penalties.

Title 18, U.S.C. section 1001, Crimes and Criminal Procedures, makes it a criminal offense, subject to a maximum fine of $10,000 or imprisonment for not more than five years or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States. Section (i)(3) of the Privacy Act (5 U.S.C. 552a) makes it a misdemeanor, subject to a maximum fine of $5,000, to knowingly and willfully request or obtain any record concerning an individual under false pretenses. Sections (i)(1) and (2) of 5 U.S.C. 552a provide penalties for violations by agency employees, of the Privacy Act or regulations established thereunder.

§ 2102.61 Exemptions.

Pursuant to subsection (k) of the Privacy Act (5 U.S.C. 552a), the Staff Secretary has determined that certain NSC systems of records may be exempt in part from sections 553(c)(3), (d), (e)(1), (e)(4), (G), (H), (I), and (f) of title 5, and from the provisions of these regulations. These systems of records may contain information which is classified pursuant to Executive Order 11652. To the extent that this occurs, records in the following systems would be exempt under the provision of 5 U.S.C. 552a(k)(1):

NSC 1.1—Central Research Index,
NSC 1.2—NSC Correspondence Files, and
NSC 1.3—NSC Meetings Registry.

PART 2103—REGULATIONS TO IMPLEMENT E.O. 12065—INCLUDING PROCEDURES FOR PUBLIC ACCESS TO DOCUMENTS THAT MAY BE DECLASSIFIED

Subpart A—Introduction

Sec.
2103.1 References.
2103.2 Purpose.
2103.3 Applicability.

Subpart B—Original Classification

2103.11 Basic policy.
2103.12 Level of original classification.
2103.13 Duration of original classification.
2103.14 Challenges to classification.

Subpart C—Derivative Classification

2103.21 Definition and application.

Subpart D—Declassification and Downgrading

2103.31 Declassification authority.
2103.32 Mandatory review for declassification.
2103.33 Downgrading authority.

Subpart E—Safeguarding

2103.41 Reproduction controls.

Subpart F—Implementation and Review

2103.51 Information Security Oversight Committee.
2103.52 Classification Review Committee.

AUTHORITY: E.O. 12065 and Information Security Oversight Office Directive No. 1.

SOURCE: 44 FR 2384, Jan. 11, 1979, unless otherwise noted.

Subpart A—Introduction

§2103.1 References.

(a) Executive Order 12065, "National Security Information," dated June 28, 1978.

(b) Information Security Oversight Office, Directive No. 1, "National Security Information," dated October 2, 1978.

§2103.2 Purpose.

The purpose of this regulation is to ensure, consistent with the authorities listed in §2103.1, that national security information processed by the National Security Council Staff is protected from unauthorized disclosure, but only to the extent, and for such period, as is necessary to safeguard the national security.

§2103.3 Applicability.

This regulation governs the National Security Council Staff Information Security Program. In consonance with the authorities listed in §2103.1, it establishes the policy and procedures for the security classification, downgrading, declassification, and safeguarding of information that is owned by, is produced for or by, or is under the control of the National Security Council Staff.

Subpart B—Original Classification

§2103.11 Basic policy.

It is the policy of the National Security Council Staff to make available to the public as much information concerning its activities as is possible, consistent with its responsibility to protect the national security.

§2103.12 Level of original classification.

Unnecessary classification, and classification at a level higher than is necessary, shall be avoided. If there is reasonable doubt as to which designation in section 1–1 of Executive Order 12065 is appropriate, or whether information should be classified at all, the less restrictive designation should be used, or the information should not be classified.

§2103.13 Duration of original classification.

Original classification may be extended beyond six years only by officials with Top Secret classification authority. This extension authority shall be used only when these officials determine that the basis for original classification will continue throughout the entire period that the classification will be in effect and only for the following reasons:

(a) The information is "foreign government information" as defined by the authorities in §2301.1;

(b) The information reveals intelligence sources and methods;

(c) The information pertains to communication security;

(d) The information reveals vulnerability or capability data, the unauthorized disclosure of which can reasonably be expected to render ineffective a system, installation, or project important to the national security;

(e) The information concerns plans important to the national security, the unauthorized disclosure of which reasonably can be expected to nullify the effectiveness of the plan;

(f) The information concerns specific foreign relations matters, the continued protection of which is essential to the national security;

(g) Disclosure of the information would place a person's life in immediate jeopardy; or

(h) The continued protection of the information is specifically required by statute.

Even when the extension authority is exercised, the period of original classification shall not be greater than twenty years from the date or original classification, except that the original classification of "foreign government information" pursuant to paragraph (a) of this section may be for a period of thirty years.

§ 2103.14 Challenges to classification.

If holders of classified information believe that the information is improperly or unnecessarily classified, or that original classification has been extended for too long a period, they should discuss the matter with their immediate superiors or the classifier of the information. If these discussions do not satisfy the concerns of the challenger, the matter should be brought to the attention of the chairperson of the NSC Information Security Oversight Committee (see § 2103.51 of this part).

Subpart C—Derivative Classification

§ 2103.21 Definition and application.

Derivative classification is the act of assigning a level of classification to information that is determined to be the same in substance as information that is currently classified. Thus, derivative classification may be accomplished by any person cleared for access to that level of information, regardless of whether the person has original classification authority at that level.

Subpart D—Declassification and Downgrading

§ 2103.31 Declassification authority.

The Staff Secretary, Staff Counsel, and Director of Freedom of Information of the National Security Council Staff are authorized to declassify NSC documents after consultation with the appropriate NSC Staff members.

§ 2103.32 Mandatory review for declassification.

(a) *Receipt.* (1) Requests for mandatory review for declassification under section 3–501 of Executive Order 12065 must be in writing and should be addressed to :

National Security Council, ATTN: Staff Secretary (Mandatory Review Request), Old Executive Office Building, Washington, DC 20506.

(2) The requestor shall be informed of the date of receipt of the request. This date will be the basis for the time limits specified in paragraph (b) of this section.

(3) If the request does not reasonably describe the information sought, the requestor shall be notified that, unless additional information is provided or the request is made more specific, no further action will be taken.

(b) *Review.* (1) The requestor shall be informed of the National Security Council Staff determination within sixty days of receipt of the initial request.

(2) If the determination is to withhold some or all of the material requested, the requestor may appeal the determination. The requestor shall be informed that such an appeal must be made in writing within sixty days of receipt of the denial and should be addressed to the chairperson of the National Security Council Classification Review Committee.

(3) The requestor shall be informed of the appellate determination within thirty days of receipt of the appeal.

(c) *Fees.* (1) Fees for the location and reproduction of information that is the subject of a mandatory review request shall be assessed according to the following schedule:

(i) *Search for records.* $5.00 per hour when the search is conducted by a clerical employee; $8.00 per hour when the search is conducted by a professional employee. No fee shall be assessed for searches of less than one hour.

(ii) *Reproduction of documents.* Documents will be reproduced at a rate of $.25 per page for all copying of four pages or more. No fee shall be assessed for reproducing documents that are three pages or less, or for the first three pages of longer documents.

(2) Where it is anticipated that the fees chargeable under this section will amount to more than $25, and the requestor has not indicated in advance a willingness to pay fees as high as are anticipated, the requestor shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed $25, an advance deposit may be required. Dispatch of such a notice or request shall suspend the running of the period for response by the NSC Staff until a reply is received from the requestor.

(3) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the Treasury of the United States and mailed to the Staff Secretary, National Security Council, Washington, DC 20506.

(4) [Reserved]

(5) A receipt for fees paid will be given only upon request. Refund of fees paid for services actually rendered will not be made.

(6) If a requestor fails to pay within thirty days for services rendered, further action on any other requests submitted by that requestor shall be suspended.

(7) The Staff Secretary, National Security Council may waive all or part of any fee provided for in this section when it is deemed to be in either the interest of the NSC Staff or of the general public.

§ 2103.33 Downgrading authority.

The Staff Secretary, Staff Counsel, and Director of Freedom of Information of the National Security Council Staff are authorized to downgrade NSC documents, after consultation with the appropriate NSC Staff members.

Subpart E—Safeguarding

§ 2103.41 Reproduction controls.

The Staff Secretary shall maintain records to show the number and distribution of all Top Secret documents, of all documents covered by special access programs distributed outside the originating agency, and of all Secret and Confidential documents that are marked with special dissemination or reproduction limitations.

Subpart F—Implementation and Review

§ 2103.51 Information Security Oversight Committee.

The NCS Information Security Oversight Committee shall be chaired by the Staff Counsel of the National Security Council Staff. The Committee shall be responsible for acting on all suggestions and complaints concerning the administration of the National Security Council information security program. The chairperson, who shall represent the NSC Staff on the Interagency Information Security Committee shall also be responsible for conducting an active oversight program to ensure effective implementation of Executive Order 12065.

§ 2103.52 Classification Review Committee.

The NSC Classification Review Committee shall be chaired by the Staff Secretary of the National Security Council. The Committee shall decide appeals from denials of declassification requests submitted pursuant to section 3–5 of Executive Order 12065. The Committee shall consist of the chairperson, the NSC Director of Freedom of Information, and the NSC Staff member with primary subject matter responsibility for the material under review.

CHAPTER XXIV—OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Part		*Page*
2400	Regulations to implement E.O. 12356; Office of Science and Technology Policy information security program	559

PART 2400—REGULATIONS TO IMPLEMENT E.O. 12356; OFFICE OF SCIENCE AND TECHNOLOGY POLICY INFORMATION SECURITY PROGRAM

Subpart A—General Provisions

Sec.
2400.1 Authority.
2400.2 Purpose.
2400.3 Applicability.
2400.4 Atomic Energy Material.

Subpart B—Original Classification

2400.5 Basic policy.
2400.6 Classification levels.
2400.7 Original classification authority.
2400.8 Limitations on delegation of original classification authority.
2400.9 Classification requirements.
2400.10 Presumption of damage.
2400.11 Duration of classification.
2400.12 Identification and markings.
2400.13 Limitations on classification.

Subpart C—Derivative Classification

2400.14 Use of derivative classification.
2400.15 Classification guides.
2400.16 Derivative classification markings.

Subpart D—Declassification and Downgrading

2400.17 Policy.
2400.18 Declassification and downgrading authority.
2400.19 Declassification by the Director of the Information Security Oversight Office.
2400.20 Systematic review for declassification.
2400.21 Mandatory review for declassification.
2400.22 Freedom of Information Act and Privacy Act requests.
2400.23 Prohibition.
2400.24 Downgrading.

Subpart E—Safeguarding

2400.25 Access.
2400.26 Access by historical researchers and former Presidential appointees.
2400.27 Storage of classification information.
2400.28 Dissemination of classified information.
2400.29 Accountability and control.
2400.30 Reproduction of classified information.
2400.31 Destruction of classified information.
2400.32 Transmittal of classified information.
2400.33 Loss or possible compromise.

Subpart F—Foreign Government Information

2400.34 Classification.
2400.35 Duration of classification.
2400.36 Declassification.
2400.37 Mandatory review.
2400.38 Protection of foreign government information.

Subpart G—Security Education

2400.39 Responsibility and objectives.

Subpart H—Office of Science and Technology Policy Information Security Program Management

2400.40 Responsibility.
2400.41 Office Review Committee.
2400.42 Security Officer.
2400.43 Heads of offices.
2400.44 Custodians.
2400.45 Information Security Program Review.
2400.46 Suggestions or complaints.

AUTHORITY: E.O. 12356 and Information Security Oversight Office Directive No. 1.

SOURCE: 48 FR 10821, Mar. 15, 1983, unless otherwise noted.

Subpart A—General Provisions

§ 2400.1 Authority.

(a) Executive Order 12356 "National Security Information," dated April 2, 1982, 47 FR 14874 (Apr. 6, 1982); 47 FR 15557 (Apr. 12, 1982) and Order of Designation of May 7, 1982, 47 FR 20105 (May 11, 1982).

(b) Information Security Oversight Office, Directive No. 1, "National Security Information," dated June 23, 1982, 47 FR 27836 (June 25, 1982) (Directive No. 1).

§ 2400.2 Purpose.

The purpose of this Regulation is to ensure, consistent with the authorities of § 2400.1 that information of the Office of Science and Technology Policy (OSTP) relating to national security is protected from unauthorized disclosure, but only to the extent and for such period as is necessary to safeguard the national security.

§ 2400.3 Applicability.

This Regulation governs the Office of Science and Technology Policy Information Security Program. In accordance with the provisions of Executive Order 12356 and Directive No. 1 it establishes, for uniform application throughout the Office of Science and Technology Policy, the policies and procedures for the security classification, downgrading, declassification and safeguarding of information that is owned by, produced for or by, or under the control of the office of Science and Technology Policy.

§ 2400.4 Atomic Energy Material.

Nothing in this Regulation supersedes any requirement made by or under the Atomic Energy act of 1954, as amended. "Restricted Data" and information designated as "Formerly Restricted Data" shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and regulations issued pursuant thereto by the Department of Energy.

Subpart B—Original Classification

§ 2400.5 Basic policy.

Except as provided in the Atomic Energy Act of 1954, as amended, Executive Order 12356, as implemented by Directive No. 1 and this Regulation, provides the only basis for classifying information. The policy of the Office of Science and Technology Policy is to make available to the public as much information concerning its activities as is possible, consistent with its responsibility to protect the national security. Information may not be classified unless its disclosure reasonably could be expected to cause damage to the national security.

§ 2400.6 Classification levels.

(a) National security information (hereinafter "classified information") shall be classified at one of the following three levels:

(1) "Top Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security.

(2) "Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security.

(3) "Confidential" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security.

(b) Except as otherwise provided by statute, no other terms shall be used to identify classified information. Markings other than "Top Secret," "Secret," and "Confidential," such as "For Official Use Only," shall not be used to identify national security information. In addition, no other term or phrase shall be used in conjunction with one of the three authorized classification levels, such as "Secret Sensitive" or "Agency Confidential." The terms "Top Secret", "Secret", and "Confidential" should not be used to identify nonclassified executive branch information.

(c) Unnecessary classification, and classification at a level higher than is necessary shall be scrupulously avoided.

(d) If there is reasonable doubt about the need to classify information, it shall be safeguarded as if it were classified "Confidential" pending a determination by an original classification authority, who shall make this determination within thirty (30) days. If there is reasonable doubt about the appropriate level of classification the originator of the information shall safeguard it at the higher level of classification pending a determination by an original classification authority, who shall make this determination within thirty (30) days. Upon the determination of a need for classification and/or the proper classification level, the information that is classified shall be marked as provided in § 2400.12 of this part.

§ 2400.7 Original classification authority.

(a) Authority for original classification of information as Top Secret shall be exercised within OSTP only by the Director and by such principal subordinate officials having frequent need to

exercise such authority as the Director shall designate in writing.

(b) The authority to classify information originally as Secret shall be exercised within OSTP only by the Director, other officials delegated in writing to have original Top Secret classification authority, and any other officials delegated in writing to have original Secret classification authority.

(c) The authority to classify information originally as Confidential shall be exercised within OSTP only by officials with original Top Secret or Secret classification authority and any officials delegated in writing to have original Confidential classification authority.

§ 2400.8 Limitations on delegation of original classification authority.

(a) The Director, OSTP is the only official authorized to delegate original classification authority.

(b) Delegations of original classification authority shall be held to an absolute minimum.

(c) Delegations of original classification authority shall be limited to the level of classification required.

(d) Original classification authority shall not be delegated to OSTP personnel who only quote, restate, extract or paraphrase, or summarize classified information or who only apply classification markings derived from source material or as directed by a classification guide.

(e) The Executive Director, OSTP, shall maintain a current listing of persons or positions receiving any delegation of original classification authority. If possible, this listing shall be unclassified.

(f) Original classification authority may not be redelegated.

(g) *Exceptional Cases.* When an employee, contractor, licensee, or grantee of OSTP that does not have original classification authority originates information believed by that person to require classification, the information shall be protected in a manner consistent with these Regulations as provided in § 2400.6(d) of this part. The information shall be transmitted promptly as provided in these Regulations to the official in OSTP who has appropriate subject matter interest and classification authority with respect to this information. That official shall decide within thirty (30) days whether to classify this information. If the information is not within OSTP's area of classification responsibility, OSTP shall promptly transmit the information to the responsible agency. If it is not clear which agency has classification responsibility for this information, it shall be sent to the Director of the Information Security Oversight Office. The Director shall determine the agency having primary subject matter interest and forward the information, with appropriate recommendations, to that agency for a classification determination.

§ 2400.9 Classification requirements.

(a) Information may be classified only if it concerns one or more of the categories cited in Executive Order 12356, as subcategorized below, *and* an official having original classification authority determines that its unauthorized disclosure, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security.

(1) Military plans, weapons or operations;

(2) The vulnerabilities or capabilities of systems, installations, projects, or plans relating to the national security;

(3) Foreign government information;

(4) Intelligence activities (including special activities), or intelligence sources or methods;

(5) Foreign relations or foreign activities of the United States;

(6) Scientific, technological, or economic matters relating to the national security;

(7) United States Government programs for safe-guarding nuclear materials or facilities;

(8) Cryptology;

(9) A confidential source; or

(10) Other categories of information which are related to national security and that require protection against unauthorized disclosure as determined by the Director, Office of Science and Technology Policy. Each such determination shall be reported promptly to the Director of the Information Security Oversight Office.

(b) Foreign government information need not fall within any other classification category listed in paragraph (a) of this section to be classified.

(c) Certain information which would otherwise be unclassified may require classification when combined or associated with other unclassified or classified information. Classification on this basis shall be fully supported by a written explanation that, at a minimum, shall be maintained with the file or referenced on the record copy of the information.

(d) Information classified in accordance with this section shall not be declassified automatically as a result of any unofficial publication or inadvertent or unauthorized disclosure in the United States or abroad of identical or similar information. Following an inadvertent or unauthorized publication or disclosure of information identical or similar to information that has been classified in accordance with Executive Order 12356 or predecessor orders, OSTP, if the agency of primary interest, shall determine the degree of damage to the national security, the need for continued classification, and in coordination with the agency in which the disclosure occurred, what action must be taken to prevent similar occurrences. If the agency of primary interest is other than OSTP, the matter shall be referred to that agency.

§ 2400.10 Presumption of damage.

Unauthorized disclosure of foreign government information, the identity of a confidential foreign source, or intelligence sources or methods, is presumed to cause damage to the national security.

§ 2400.11 Duration of classification.

(a) Information shall be classified as long as required by national security considerations. When it can be determined, a specific date or event for declassification shall be set by the original classification authority at the time the information is originally classified.

(b) Automatic declassification determinations under predecessor Executive Orders shall remain valid unless the classification is extended by an authorized official of the originating agency. These extensions may be by individual documents or categories of information. The originating agency shall be responsible for notifying holders of the information of such extensions.

(c) Information classified under predecessor Executive Orders and marked for declassification review shall remain classified until reviewed for declassification under the provisions of Executive Order 12356.

(d) Information classified under predecessor Executive Orders that does not bear a specific date or event for declassification shall remain classified until reviewed for declassification. The authority to extend the classification of information subject to automatic declassification under predecessor Orders is limited to those officials who have classification authority over the information and are designated in writing to have original classification authority at the level of the information to remain classified. Any decision to extend this classification on other than a document-by-document basis shall be reported to the Director of the Information Security Oversight Office.

§ 2400.12 Identification and markings.

(a) At the time of original classification, the following information shall be shown on the face of all classified documents, or clearly associated with other forms of classified information in a manner appropriate to the medium involved, unless this information itself would reveal a confidential source or relationship not otherwise evident in the document or information:

(1) One of the three classification levels defined in § 2400.6 of this part;

(2) The identity of the original classification authority if other than the person whose name appears as the approving or signing official;

(3) The agency and office of origin; and

(4) The date or event for declassification, or the notation "Originating Agency's Determination Required."

(b) Each classified document shall, by marking or other means, indicate which portions are classified, with the applicable classification level, and which portions are not classified. The Director OSTP may, for good cause,

grant and revoke waivers of this requirement for specified classes of documents or information. The Director of the Information Security Oversight Office shall be notified of any waivers.

(c) Marking designations implementing the provisions of Executive Order 12356, including abbreviations, shall conform to the standards prescribed in Directive No. 1 issued by the Information Security Oversight Office.

(d) Foreign government information shall either retain its original classification or be assigned a United States classification that shall ensure a degree of protection at least equivalent to that required by the entity that furnished the information.

(e) Information assigned a level of classification under predecessor Executive Orders shall be considered as classified at that level of classification despite the omission of other required markings. Omitted markings may be inserted on a document by the officials specified in § 2400.18 of this part.

§ 2400.13 Limitations on classification.

(a) In no case shall information be classified in order to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interest of national security.

(b) Basic scientific research information not clearly related to the national security may not be classified.

(c) The Director may reclassify information previously declassified and disclosed if it is determined in writing that (1) the information requires protection in the interest of national security; and (2) the information may reasonably be recovered. These reclassification actions shall be reported promptly to the Director of the Information Security Oversight Office. Before reclassifying any information, the Director shall consider the factors listed in § 2001.6 of Directive No. 1, which shall be addressed in the report to the Director of the Information Security Oversight Office.

(d) Information may be classified or reclassified after OSTP has received a request for it under the Freedom of Information Act (5 U.S.C. 552a) or the Privacy Act of 1974 (5 U.S.C. 552), or the mandatory review provisions of Executive Order 12356 (section 3.4) if such classification meets the requirements of this Order and is accomplished personally and on a document-by-document basis by the Director.

Subpart C—Derivative Classification

§ 2400.14 Use of derivative classification.

(a) Derivative classification is (1) the determination that information is in substance the same as information currently classified, and (2) the application of the same classification markings. Persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide, need not possess original classification authority. If a person who applies derivative classification markings believes that the paraphrasing, restating, or summarizing of classified information has changed the level of or removed the basis for classification, that person must consult an appropriate official of the originating agency or office of origin who has the authority to declassify, downgrade or upgrade the information.

(b) Persons who apply derivative classification markings shall:

(1) Observe and respect original classification decisions; and

(2) Carry forward to any newly created documents any assigned authorized markings. The declassification date or event that provides the longest period of classification shall be used for documents classified on the basis of multiple sources.

§ 2400.15 Classification guides.

(a) OSTP shall issue and maintain classification guides to facilitate the proper and uniform derivative classification of information. These guides shall be used to direct derivative classification.

(b) The classification guides shall be approved, in writing, by the Director or by officials having Top Secret original classification authority. Such approval

constitutes an original classification decision.

(c) Each classification guide shall specify the information subject to classification in sufficient detail to permit its ready and uniform identification and categorization and shall set forth the classification level and duration in each instance. Additionally, each classification guide shall prescribe declassification instructions for each element of information in terms of (1) a period of time, (2) the occurrence of an event, or (3) a notation that the information shall not be automatically declassified without the approval of OSTP.

(d) The classification guides shall be kept current and shall be fully reviewed at least every two years. The Executive Director, OSTP shall maintain a list of all OSTP classification guides in current use.

(e) The Executive Director, OSTP shall receive and maintain the record copy of all approved classification guides and changes thereto. He will assist the originator in determining the required distribution.

(f) The Director may, for good cause, grant and revoke waivers of the requirement to prepare classification guides for specified classes of documents or information. The Director of the Information Security Oversight Office shall be notified of any waivers. The Director's decision to waive the requirement to issue classification guides for specific classes of documents or information will be based, at a minimum, on an evaluation of the following factors:

(1) The ability to segregate and describe the elements of information;

(2) The practicality of producing or disseminating the guide because of the nature of the information;

(3) The anticipated usage of the guide as a basis for derivative classification; and

(4) The availability of alternative sources for derivatively classifying the information in a uniform manner.

§ 2400.16 Derivative classification markings.

(a) Documents classified derivatively on the basis of source documents or classification guides shall bear all markings prescribed in § 2400.12 of this part and Directive No. 1 as are applicable. Information for these markings shall be taken from the source document or instructions in the appropriate classification guide. When markings are omitted because they may reveal a confidential source or relationship not otherwise evident, as described in § 2400.12 of this part, the information may not be used as a basis for derivative classification.

(b) The authority for classification shall be shown as directed in Directive No. 1.

Subpart D—Declassification and Downgrading

§ 2400.17 Policy.

Declassification of information shall be given emphasis comparable to that accorded classification. Information classified pursuant to Executive Order 12356 and prior orders shall be declassified or downgraded as soon as national security considerations permit. Decisions concerning declassification shall be based on the loss of sensitivity of the information with the passage of time or on the occurrence of an event which permits declassification. When information is reviewed for declassification pursuant to this regulation, that information shall be declassified unless the designated declassification authority determines that the information continues to meet the classification requirements prescribed in § 2400.9 of this part despite the passage of time. The Office of Science and Technology Policy officials shall coordinate their review of classified information with other agencies that have a direct interest in the subject matter.

§ 2400.18 Declassification and downgrading authority.

Information shall be declassified or downgraded by the official who authorized the original classification, if that official is still serving the same position; the originator's successor; a supervisory official of either; or officials delegated such authority in writing by the Director, OSTP. The Executive Director, OSTP shall maintain a current listing of persons or positions receiving

those delegations. If possible, these listings shall be unclassified.

§ 2400.19 Declassification by the Director of the Information Security Oversight Office.

If the Director of the Information Security Oversight Office (ISOO) determines that information is classified in violation of Executive Order 12356, the Director, ISOO may require the information to be declassified by the agency that originated the classification. Any such decision by the Director ISOO may be appealed by the Director, OSTP to the National Security Council. The information shall remain classified, pending a prompt decision on the appeal.

§ 2400.20 Systematic review for declassification.

(a) *Permanent records*. Systematic review is applicable only to those classified records, and presidential papers or records that the Archivist of the United States, acting under the Federal Records Act, has determined to be of sufficient historical or other value to warrant permanent retention.

(b) *Non-permanent records*. Non-permanent classified records shall be disposed of in accordance with schedules approved by the Administrator of General Services under the Records Disposal Act. These schedules shall provide for the continued retention of records subject to an ongoing mandatory review for declassification request.

(c) *Office of Science and Technology Policy Responsibility*. The Director, OSTP, shall:

(1) Issue guidelines for systematic declassification review and, if applicable, for downgrading. These guidelines shall be developed in consultation with the Archivist and the Director of the Information Security Oversight Office and be designated to assist the Archivist in the conduct of systematic reviews;

(2) Designate experienced personnel to provide timely assistance to the Archivist in the systematic review process;

(3) Review and update guidelines for systematic declassification review and downgrading at least every five years unless earlier review is requested by the Archivist.

(d) *Foreign Government Information*. Systematic declassification review of foreign government information shall be in accordance with guidelines issued by the Director of the Information Security Oversight Office.

(e) *Special procedures*. The Office of Science and Technology Policy shall be bound by the special procedures for systematic review of classified cryptologic records and classified records pertaining to intelligence activities (including special activities) or intelligence sources or methods issued by the Secretary of Defense and the Director of Central Intelligence, respectively.

§ 2400.21 Mandatory review for declassification.

(a) Except as provided in paragraph (d) of this section, all information classified under Executive Order 12356 or predecessor orders shall be subject to a review for declassification by the Office of Science and Technology Policy, if:

(1) The request is made by a United States citizen or permanent resident alien, a federal agency, or a State or local government; and

(2) The request is made in writing and describes the document or material containing the information with sufficient specificity to enable the Office of Science and Technology Policy to locate it with a reasonable amount of effort.

(b) Requests should be addressed to: Executive Director, Office of Science and Technology Policy, Executive Office of the President, Washington, DC 20506.

(c) If the request does not reasonably describe the information sought to allow identification of documents containing such information, the requester shall be notified that unless additional information is provided or the request is made more specific, no further action will be taken.

(d) Information originated by a President, the White House Staff, by committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to a President or acting on behalf of a

President is exempted from the mandatory review provisions of § 2400.24(a) of this part. The Archivist of the United States shall have the authority to review, downgrade and declassify information under the control of the Administrator of General Services or the Archivist pursuant to sections 2107, 2107 note, or 2203 of title 44, United States Code. Review procedures developed by the Archivist shall provide for consultation with agencies having primary subject matters interest and shall be consistent with the provisions of applicable laws or lawful agreements that pertain to the respective presidential papers or records. Any decision by the Archivist may be appealed to the Director of the Information Security Oversight Office. Agencies with primary subject matter interest shall be notified promptly of the Director's decision on such appeals and may further appeal to the National Security Council. The information shall remain classified pending a prompt decision on the appeal.

(e) Office of Science and Technology Policy officials conducting a mandatory review for declassification shall declassify information no longer requiring protection under Executive Order 12356. They shall release this information unless withholding is otherwise authorized under applicable law.

(f) Office of Science and Technology Policy responses to mandatory review requests shall be governed by the amount of search and review time required to process the request. Normally the requester shall be informed of the Office of Science and Technology Policy determination within thirty days of receipt of the original request (or within thirty days of the receipt of the required amplifying information in accordance with paragraph (c) of this section). In the event that a determination cannot be made within thirty days, the requester shall be informed of the additional time needed to process the request. However, OSTP, shall make a final determination within one year from the date of receipt of the request except in unusual circumstances.

(g) When information cannot be declassified in its entirety, OSTP will make a reasonable effort to release, consistent with other applicable law, those declassified portions of that requested information the constitute a coherent segment.

(h) If the information may not be released in whole or in part, the requester shall be given a brief statement as to the reason for denial, and notice of the right to appeal the determination in writing within sixty days of receipt of the denial to the chairperson of the Office of Science and Technology Policy Review Committee. If appealed, the requester shall be informed in writing of the appellate determination within thirty days of receipt of the appeal.

(i) When a request is received for information originated by another agency, the Executive Director, Office of Science and Technology Policy, shall:

(1) Forward the request to such agency for review together with a copy of the document containing the information requested, where practicable, and where appropriate, with the Office of Science and Technology Policy recommendation to withhold or declassify and release any of the information;

(2) Notify the requester of the referral unless the agency to which the request is referred objects to such notice on grounds that its association with the information requires protection; and

(3) Request, when appropriate, that the agency notify the Office of Science and Technology Policy of its determination.

(j) If the request requires the rendering of services for which fees may be charged under title 5 of the Independent Offices Appropriation Act, 31 U.S.C. 483a, the Executive Director, Office of Science and Technology Policy, may calculate the anticipated amount of fees to be charged.

(1) Fees for the location and reproduction of information that is the subject of a mandatory review request shall be assessed according to the following schedule:

(i) *Search for records.* $5.00 per hour when the search is conducted by a clerical employee; $8.00 per hour when the search is conducted by a professional employee. No fee shall be assessed for searches of less than one hour.

(ii) *Reproduction of documents.* Documents will be reproduced at a rate of

$.25 per page for all copying of four pages or more. No fee shall be assessed for reproducing documents that are three pages or less, or for the first three pages of longer documents.

(2) Where it is anticipated that the fees chargeable under this section will amount to more than $25, and the requestor has not indicated in advance a willingness to pay fees as high as are anticipated, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed $25, an advance deposit may be required. Dispatch of such a notice or request shall suspend the running of the period for response by OSTP until a reply is received from the requester.

(3) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made to the Treasury of the United States and mailed to the Executive Director, Office of Science and Technology Policy, Executive Office of the President, Washington, DC 20506.

(4) A receipt for fees paid will be given only upon request. Refund of fees paid for services actually rendered will not be made.

(5) If a requester fails to pay within thirty days for services rendered, further action on any other requests submitted by that requestor shall be suspended.

(6) The Executive Director, Office of Science and Technology Policy may waive all or part of any fee provided for in this section when it is deemed to be in either the interest of the OSTP or the general public.

§ 2400.22 Freedom of Information Act and Privacy Act requests.

The Office of Science and Technology Policy shall process requests for declassification that are submitted under the provisions of the Freedom of Information Act, as amended, or the Privacy Act of 1974, in accordance with the provisions of those Acts.

§ 2400.23 Prohibition.

In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of Executive Order 12356 and Directive No. 1, or this regulation:

(a) The Office of Science and Technology Policy shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or non-existence is itself classifiable under Executive Order 12356.

(b) When the Office of Science and Technology Policy receives any request for documents in its custody that were classified by another agency, it shall refer copies of the request and the requested documents to the originating agency for processing, and may, after consultation with the originating agency, inform the requester of the referral. In cases which the originating agency determines in writing that a response under paragraph (a) of this section is required, the Office of Science and Technology Policy shall respond to the requester in accordance with that paragraph.

§ 2400.24 Downgrading.

(a) When it will serve a useful purpose, original classification authorities may, at the time of original classification, specify that downgrading of the assigned classification will occur on a specified date or upon the occurrence of a stated event.

(b) Classified information marked for automatic downgrading is downgraded accordingly without notification to holders.

(c) Classified information not marked for automatic downgrading may be assigned a lower classification designation by the originator or by an official authorized to declassify the same information. Prompt notice of such downgrading shall be provided to known holders of the information.

Subpart E—Safeguarding

§ 2400.25 Access.

(a) A person is eligible for access to classified information provided that a determination of trustworthiness has

been made by agency heads or designated officials and provided that such access is essential to the accomplishment of lawful and authorized Government purposes. A personnel security clearance is an indication that the trustworthiness decision has been made. Procedures shall be established by the head of each office to prevent access to classified information before a personnel security clearance has been granted. The number of people cleared and granted access to classified information shall be maintained at the minimum number that is consistent with operational requirements and needs. No one has a right to have access to classified information solely by virtue of rank or position. The final responsibility for determinating whether an individual's official duties require possession of or access to any element or item of classified information, and whether the individual has been granted the appropriate security clearance by proper authority, rests with the individual who has authorized possession, knowledge, or control of the information and not with the prospective recipient. These principles are equally applicable if the prospective recipient is an organizational entity, other Federal agencies, contractors, foreign governments, and others.

(b) When access to a specific classification category is no longer required for the performance of an individual's assigned duties, the security clearance will be administratively adjusted, without prejudice to the individual, to the classification category, if any, required.

(c) The Director, Office of Science and Technology Policy may create special access programs to control access, distribution, and protection of particularly sensitive information classified pursuant to Executive Order 12356 or predecessor orders if:

(1) Normal management and safeguarding procedures do not limit access sufficiently;

(2) The number of persons with access is limited to the minimum necessary to meet the objective of providing extra protection for the information;

(3) The special access program is established in writing; and

(4) A system of accounting for the program is established and maintained.

§ 2400.26 Access by historical researchers and former Presidential appointees.

(a) The requirement in Section 4.1(a) of Executive Order 12356 that access to classified information may be granted only as is essential to the accomplishment of authorized and lawful Government purposes may be waived as provided in paragraph (b) of this section for persons who:

(1) Are engaged in historical research projects, or

(2) Previously have occupied policymaking positions to which they were appointed by the President.

(b) Waivers under paragraph (a) of this section may be granted only if the Director, Office of Science and Technology Policy:

(1) Determines in writing that access is consistent with the interest of national security;

(2) Takes appropriate steps to protect classified information from unauthorized disclosure or compromise, and ensures that the information is safeguarded in a manner consistent with Executive Order 12356;

(3) Limits the access granted to former presidential appointees to items that the person originated, reviewed, signed, or received while serving as a presidential appointee; and

(4) Has received a written agreement from the researcher or former presidential appointee that his notes can be reviewed by OSTP for a determination that no classified material is contained therein.

§ 2400.27 Storage of classification information.

Whenever classified information is not under the personal control and observation of an authorized person, it will be guarded or stored in a locked security container approved for the storage and protection of the appropriate level of classified information as prescribed in § 2001.43 of Directive No. 1.

§ 2400.28 Dissemination of classified information.

Heads of OSTP offices shall establish procedures consistent with this Regulation for dissemination of classified material. The originating official may prescribe specific restrictions on dissemination of classified information when necessary.

(a) Classified information shall not be disseminated outside the executive branch except under conditions that ensure that the information will be given protection equivalent to that afforded within the executive branch.

(b) Except as provided by directives issued by the President through the National Security Council, classified information originating in one agency may not be disseminated outside any other agency to which it has been made available without the consent of the originating agency. For purposes of this Section, the Department of Defense shall be considered one agency.

§ 2400.29 Accountability and control.

(a) Each item of Top Secret, Secret, and Confidential information is subject to control and accountability requirements.

(b) The Security Officer will serve as Top Secret Control Officer (TSCO) for the Office of Science and Technology Policy and will be responsible for the supervision of the Top Secret control program. He/she will be assisted by an Assistant Top Secret Control Officer (ATSCO) to effect the Controls prescribed herein for all Top Secret material.

(c) The TSCO shall receive, transmit, and maintain current access and accountability records for Top Secret information. The records shall show the number and distribution of all Top Secret documents, including any reproduced copies.

(d) Top Secret documents and material will be accounted for by a continuous chain of receipts.

(e) An inventory of Top Secret documents shall be made at least annually.

(f) Destruction of Top Secret documents shall be accomplished only by the TSCO or the ATSCO.

(g) Records shall be maintained to show the number and distribution of all classified documents covered by special access programs, and of all Secret and Confidential documents which are marked with special dissemination and reproduction limitations.

(h) The Security Officer will develop procedures for the accountability and control of Secret and Confidential information. These procedures shall require all Secret and Confidential material originated or received by OSTP to be controlled. Control shall be accomplished by the ATSCO.

§ 2400.30 Reproduction of classified information.

Documents or portions of documents and materials that contain Top Secret information shall not be reproduced without the consent of the originator or higher authority. Any stated prohibition against reproduction shall be strictly observed. Copying of documents containing classified information at any level shall be minimized. Specific reproduction equipment shall be designated for the reproduction of classified information and rules for reproduction of classified information shall be posted on or near the designated equipment. Notices prohibiting reproduction of classified information shall be posted on equipment used only for the reproduction of unclassified information. All copies of classified documents reproduced for any purpose including those incorporated in a working paper are subject to the same controls prescribed for the document from which the reproduction is made.

§ 2400.31 Destruction of classified information.

(a) Classified information no longer needed in current working files or for reference or record purposes shall be processed for appropriate disposition in accordance with the provisions of chapters 21 and 33 of title 44, U.S.C., which governs disposition of classified records. Classified information approved for destruction shall be destroyed in accordance with procedures and methods prescribed by the Director, OSTP, as implemented by the Security Officer. These procedures and methods must provide adequate protection to prevent access by unauthorized persons and must preclude recognition

or reconstruction of the classified information or material.

(b) All classified information to be destroyed will be provided to the ATSCO for disposition. Controlled documents will be provided whole so that accountability records may be corrected prior to destruction by the ATSCO.

§ 2400.32 Transmittal of classified information.

The transmittal of classified information outside of the Office of Science and Technology Policy shall be in accordance with procedures of § 2001.44 of Directive No. 1. The Security Officer shall be responsible for resolving any questions relative to such transmittal.

§ 2400.33 Loss or possible compromise.

(a) Any person who has knowledge of the loss or possible compromise of classified information shall immediately report the circumstances to the Security Officer. The Security Officer shall notify the Director and the agency that originated the information as soon as possible so that a damage assessment may be conducted and appropriate measures taken to negate or minimize any adverse effect of the compromise.

(b) The Security Officer shall initiate an inquiry to:

(1) Determine cause,

(2) Place responsibility, and

(3) Take corrective measures and appropriate administrative, disciplinary, or legal action.

(c) The Security Officer shall keep the Director advised on the details of the inquiry.

Subpart F—Foreign Government Information

§ 2400.34 Classification.

(a) Foreign government information classified by a foreign government or international organization of governments shall retain its original classification designation or be assigned a United States classification designation that will ensure a degree of protection equivalent to that required by the government or organization that furnished the information. Original classification authority is not required for this purpose.

(b) Foreign government information that was not classified by a foreign entity but was provided with the expectation, expressed or implied, that it be held in confidence must be classified because Executive Order 12356 states a presumption of damage to the national security in the event of unauthorized disclosure of such information.

§ 2400.35 Duration of classification.

Foreign government information shall not be assigned a date or event for automatic declassification unless specified or agreed to by the foreign entity.

§ 2400.36 Declassification.

Officials shall respect the intent of this Regulation to protect foreign government information and confidential foreign sources.

§ 2400.37 Mandatory review.

Except as provided in this paragraph, OSTP shall process mandatory review requests for classified records containing foreign government information in accordance with § 2400.21. The agency that initially received or classified the foreign government information shall be responsible for making a declassification determination after consultation with concerned agencies. If OSTP receives a request for mandatory review and is not the agency that received or classified the foreign government information, it shall refer the request to the appropriate agency for action. Consultation with the foreign originator through appropriate channels may be necessary prior to final action on the request.

§ 2400.38 Protection of foreign government information.

Classified foreign government information shall be protected as is prescribed by this regulation for United States classified information of a comparable level.

Subpart G—Security Education

§ 2400.39 Responsibility and objectives.

The OSTP Security Officer shall establish a security education program for OSTP personnel. The program shall be sufficient to familiarize all OSTP personnel with the provisions of Executive Order 12356 and Directive No. 1, and this regulation. It shall be designed to provide initial, refresher, and termination briefings to impress upon them their individual security responsibilities.

Subpart H—Office of Science and Technology Policy Information Security Program Management

§ 2400.40 Responsibility.

The Director, OSTP is the senior OSTP official having authority and responsibility to ensure effective and uniform compliance with and implementation of Executive Order 12356 and its implementing Directive No. 1. As such, the Director, OSTP, shall have primary responsibility for providing guidance, oversight and approval of policy and procedures governing the OSTP Information Security Program. The Director, OSTP, may approve waivers or exceptions to the provisions of this regulation to the extent such action is consistent with Executive Order 12356 and Directive No. 1.

§ 2400.41 Office Review Committee.

The Office of Science and Technology Policy Review Committee (hereinafter referred to as the Office Review Committee) is hereby established and will be responsible for the continuing review of the administration of this Regulation with respect to the classification and declassification of information or material originated or held by the Office of Science and Technology Policy. The Office Review Committee shall be composed of the Executive Director who shall serve as chairperson, the Assistant Director for National Security & Space, and the Security Officer.

§ 2400.42 Security Officer.

Under the general direction of the Director, the Special Assistant to the Executive Director will serve as the Security Officer and will supervise the administration of this Regulation. He/she will develop programs, in particular a Security Education Program, to insure effective compliance with and implementation of the Information Security Program. Specifically he/she also shall:

(a) Maintain a current listing by title and name of all persons who have been designated in writing to have original Top Secret, Secret, and Confidential Classification authority. Listings will be reviewed by the Director on an annual basis.

(b) Maintain the record copy of all approved OSTP classification guides.

(c) Maintain a current listing of OSTP officials designated in writing to have declassification and downgrading authority.

(d) Develop and maintain systematic review guidelines.

§ 2400.43 Heads of offices.

The Head of each unit is responsible for the administration of this regulation within his area. These responsibilities include:

(a) Insuring that national security information is properly classified and protected;

(b) Exercising a continuing records review to reduce classified holdings through retirement, destruction, downgrading or declassification;

(c) Insuring that reproduction of classified information is kept to the absolute minimum;

(d) Issuing appropriate internal security instructions and maintaining the prescribed control and accountability records on classified information under their jurisdiction.

§ 2400.44 Custodians.

Custodians of classified material shall be responsible for providing protection and accountability for such material at all times and particularly for locking classified material in approved security equipment whenever it is not in use or under direct supervision of authorized persons. Custodians shall follow procedures which insure that unauthorized persons

do not gain access to classified information or material by sight or sound, and classified information shall not be discussed with or in the presence of unauthorized persons.

§ 2400.45 Information Security Program Review.

(a) The Director, OSTP, shall require an annual formal review of the OSTP Information Security Program to ensure compliance with the provisions of Executive Order 12356 and Directive No. 1, and this regulation.

(b) The review shall be conducted by a group of three to five persons appointed by the Director and chaired by the Executive Director. The Security Officer will provide any records and assistance required to facilitate the review.

(c) The findings and recommendations of the review will be provided to the Director for his determination.

§ 2400.46 Suggestions or complaints.

Persons desiring to submit suggestions or complaints regarding the Office of Science and Technology Policy Information Security Program should do so in writing. This correspondence should be addressed to: Executive Director, Office of Science and Technology Policy, Executive Office of the President, Washington, DC 20506.

CHAPTER XXVII—OFFICE FOR MICRONESIAN STATUS NEGOTIATIONS

Part		*Page*
2700	Security information regulations	575

PART 2700—SECURITY INFORMATION REGULATIONS

Subpart A—Introduction

Sec.
2700.1 References.
2700.2 Purpose.
2700.3 Applicability.

Subpart B—Original Classification

2700.11 Basic policy.
2700.12 Criteria for and level of original classification.
2700.13 Duration of original classification.
2700.14 Challenges to classification.

Subpart C—Derivative Classification

2700.21 Definition and application.
2700.22 Classification guides.

Subpart D—Declassification and Downgrading

2700.31 Declassification authority.
2700.32 Declassification general.
2700.33 Mandatory review for declassification.
2700.34 Downgrading authority.

Subpart E—Safeguarding

2700.41 General restrictions on access.
2700.42 Responsibility for safeguarding classified information.
2700.43 Reproduction controls.
2700.44 Administrative sanctions.

Subpart F—Implementation and Review

2700.51 Information Security Oversight Committee.
2700.52 Classified Review Committee.

AUTHORITY: E.O. 12065, National Security Regulation of June 28, 1978 (43 FR 28949, July 31, 1978); Information Security Oversight Office Directive No. 1 (43 FR 46280, October 5, 1978).

SOURCE: 44 FR 51574, Sept. 4, 1979, unless otherwise noted. Correctly designated at 44 FR 51990, Sept. 6, 1979.

Subpart A—Introduction

§ 2700.1 References.

(a) Executive Order 12065, "National Security Information," June 28, 1978, (hereinafter E.O. 12065).

(b) Information Security Oversight Office, Directive No. 1, "National Security Information," October 2, 1978, (hereinafter ISOO Directive No. 1).

§ 2700.2 Purpose.

The purpose of this Regulation is to ensure, consistent with the authorities listed in § 2700.1, that national security information originated and/or held by the Office for Micronesian Status Negotiations (OMSN), which includes the Status Liaison Office, Saipan, Northern Mariana Islands (SLNO), is protected. To ensure that such information is protected, but only to the extent and for such period as is necessary, this regulation identifies the information to be protected and prescribes certain classification, declassification and safeguarding procedures to be followed.

§ 2700.3 Applicability.

This Regulation supplements E.O. 12065 within OMSN with regard to National Security Information. In consonance with the authorities listed in § 2700.1, it establishes general policies and certain procedures for the classification, declassification and safeguarding of information which is owned by, is produced for or by, or is under the control of OMSN.

Subpart B—Original Classification

§ 2700.11 Basic policy.

(a) *General.* It is the policy of OMSN to make available to the public as much information concerning its activities as is possible, consistent with its responsibility to protect the national security.

(b) *Safeguarding national security information.* Within the Federal Government there is some information which because it bears directly on the effectiveness of our national defense and the conduct of our foreign relations, must be subject to some constraints for the security of our nation.

(c) *Balancing test.* To balance the public's interest in access to government information with the need to protect certain national security information from disclosure, these regulations indentify the information to be protected, prescribe classification, downgrading, declassification, and safeguarding procedures to be followed, and establish education, monitoring and

sanctioning systems to insure their effectiveness. When questions arise as whether the need to protect information may be outweighed by the public interest in disclosure of the information, they shall be referred to OMSN pursuant to § 2700.32(b) for a determination whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure.

§ 2700.12 Criteria for and level of original classification.

(a) *General Policy*. Documents or other material are to be classified only when protecting the national security requires that the information they contain be withheld from public disclosure. Information may not be classified to conceal violations of law, inefficiency, or administrative error, or to prevent embarrassment to a person, organization or agency, or to restrain competition. No material may be classified to limit dissemination, or to prevent or delay public release, unless its classification is consistent with E.O. 12065.

(b) *Criteria*. To be eligible for classification, information must meet two requirements:

(1) First, it must deal with one of the criteria set forth in section 1–301 of E.O. 12065;

(2) Second, the President's Personal Representative for Micronesian Status Negotiations or his delegate who has original classification authority must determine that unauthorized disclosure of the information or material can reasonably be expected to cause at least identifiable harm to the national security.

(c) *Classification designations*. Only three designations of classification are authorized—"Top Secret," "Secret," "Confidential." No other classification designation is authorized or shall have force.

(d) Unnecessary classification, and classification at a level higher than is necessary, shall be avoided. If there is reasonable doubt as to which designation in section 1–1 of E.O. 12065 is appropriate, or whether information should be classified at all, the less restrictive designation should be used, or the information should not be classified.

§ 2700.13 Duration of original classification.

(a) Information or material which is classified after December 1, 1978, shall be marked at the time of classification with the date or event for declassification or a date for review for declassification. This date or event shall be as early as national security permits and shall be no more than six years after original classification except as provided in paragraph (b) of this section.

(b) Only the President's Personal Representative for Micronesian Status Negotiations may authorize a classification period exceeding six years. Originally classified information that is so designated shall be identified with the authority and reason for extension. This authority shall be used sparingly. In those cases where extension of classification is warranted, a declassification date or event, or a date for review shall be set. This date or event shall be early as national security permits and shall be no more than twenty years after original classification except that for foreign information the date or event may be up to thirty years after original classification.

§ 2700.14 Challenges to classification.

If holders of classified information believe the information is improperly or unnecessarily classified, or that original classification has been extended for too long a period, they should discuss the matter with their immediate superiors or the classifier of the information. If these discussions do not satisfy the concerns of the challenger, the matter should be brough to the attention of the chairman of the OMSN Information Security Oversight Committee, established pursuant to § 2700.51. Action on such challenges shall be taken within 30 days from date of receipt and the challenger shall be notified of the results. When requested, anonymity of the challenger shall be preserved.

Subpart C—Derivative Classification

§ 2700.21 Definition and application.

Derivative classification is the act of assigning a level of classification to information which is determined to be the same in substance as information which is currently classified. Thus, derivative classification may be accomplished by any person cleared for access to that level of information, regardless of whether the person has original classification authority at that level.

§ 2700.22 Classification guides.

OMSN shall issue classification guides pursuant to section 2–2 of E.O. 12065. These guides, which shall be used to direct derivative classification, shall identify the information to be protected in specific and uniform terms so that the information involved can be readily identified. The classification guides shall be approved in writing by the President's Personal Representative for Micronesian Status Negotiations. Such approval constitutes an original classification decision. The classification guides shall be kept current and shall be reviewed at least every two years.

Subpart D—Declassification and Downgrading

§ 2700.31 Declassification authority.

The Director, OMSN, is authorized to declassify OMSN originated documents after consultation with the appropriate OMSN staff members.

§ 2700.32 Declassification general.

Declassification of classified information shall be given emphasis comparable to that accorded to classification. The determination to declassify information shall not be made on the basis of the level of classification assigned, but on the loss of the sensitivity of the information with the passage of time, and with due regard for the public interest in access to official information. At the time of review, any determination not to declassify shall be based on a determination that despite the passage of time since classification, release of information reasonably could still be expected to cause at least identifiable damage to the national security.

§ 2700.33 Mandatory review for declassification.

(a) *General.* All information classified under the Order or prior orders, except as provided for in section 3–503 of E.O. 12065 shall be subject to review for declassification upon request of a member of the public, a government employee, or an agency.

(b) *Receipt.* (1) Requests for mandatory review for declassification under section 3–501 of E.O. 12065 must be in writing and should be addressed to: Office for Micronesian Status Negotiations, ATTN: Security Officer (Mandatory Review Request), Room 3356, Department of the Interior, Washington, DC 20240.

(2) The requestor shall be informed of the date of receipt of the request at OMSN. This date will be the basis for the time limits specified in paragraph (c) of this section.

(3) If the request does not reasonably describe the information sought, the requestor shall be notified that, unless additional information is provided or the request is made more specific, no further action will be taken.

(4) Subject to paragraph (b)(7) of this section, if the information requested is in the custody of and under the exclusive declassification authority of OMSN, OMSN shall determine whether the information or any reasonably segregable portion of it no longer requires protection. If so, OMSN shall promptly make such information available to the requester, unless withholding it is otherwise warranted under applicable law. If the information may not be released, in whole or in part, OMSN shall give the requester a brief statement of the reasons, a notice of the right to appeal the determination to the agency review committee, and notice that such an appeal must be filed with the review committee within 60 days.

(5) When OMSN receives a request for information in a document which is in its custody, but which was classified by

another agency, it shall refer the request to the appropriate agency for review, together with a copy of the document containing the information requested, where practicable. OMSN shall also notify the requester of the referral, unless the association of the reviewing agency with the information requires protection. The reviewing agency shall review a document in coordination with any other agency involved with the classification or having a direct interest in the subject matter. The reviewing agency shall respond directly to the requester in accordance with the pertinent procedures described above and, if requested, shall notify OMSN of its determination.

(6) Requests for declassification of classified documents originated by OMSN or another agency but in the possession and control of the Administrator of General Services, pursuant to 44 U.S.C 2107 or 2107 *Note*, shall be referred by the Archivist to the agency of origin for processing and for direct response to the requests. The Archivist will inform requesters of such referrals.

(7) In the case of requests for documents containing foreign government information, OMSN, if it is also the agency which initially received the foreign government information, shall determine whether the foreign government information in the document may be declassified and released in accordance with agency policies or guidelines, consulting with other agencies of subject matter interest as necessary. If OMSN is not the agency which received the foreign government information, it shall refer the request to the latter agency, which shall take action on the request. In those cases where available agency policies or guidelines do not apply, consultation with the foreign originator through appropriate channels may be advisable prior to final action on the request.

(8) If any agency makes a request on behalf of a member of the public, the request shall be considered as a request by that member of the public and handled accordingly.

(c) *Review*. (1) Within sixty days from its receipt, OMSN shall inform the requestor of the determination of the mandatory review for declassification.

(2) If the determination is to withhold some or all of the material requested, the requestor may appeal the determination. The requestor shall be informed that an appeal must be made in writing within sixty days of receipt of the denial and should be addressed to the chairperson of the OMSN Classification Review Committee established pursuant to § 2700.52.

(3) No agency in possession of a classified document may, in response to a request for the document made under the Freedom of Information Act (5 U.S.C. 552) or under section 3–5 of E.O. 12065, refuse to confirm the existence or non-existence of the document, unless the fact of its existence or non-existence would itself be classifiable.

(4) The requestor shall be informed of the appellate determination within thirty days of receipt of the appeal.

(5) In considering requests for mandatory review, OMSN may decline to review again any request for material which has been recently reviewed and denied, except insofar as the request constitutes an appeal under paragraph (f) of this section.

(d) *Processing of Requests*. The processing of requests by OMSN shall be as follows:

(1) The Security Officer or his designee shall record the request, and arrange for search and review of the documents. The documents will be reviewed for declassification in accordance with these regulations or any applicable guidelines. If the documents remain classified and are not to be released, in whole or in part, the reviewing office will also prepare a letter informing the requester as described in paragraph (b)(4) of this section. The letter to the requester shall be signed by the President's Personal Representative for Micronesian Status Negotiations, his Deputy or the Status Liaison Officer. The Security Officer or his designee shall record disposition of the case and forward the letter of denial to the requester.

(2) If any request requires obtaining the views of other agencies, the receiving office shall arrange coordination of review with such other agencies.

(3) When all documents involved in the request are declassified and released, the receiving office will send a

release statement, to the requester, and shall inform the requester of any fees due before releasing documents.

(4) In the case of documents of agency origin requested by a Presidential Library on behalf of a member of the public, if there is a partial denial, the letter will advise the requester as described in paragraph (b)(4) of this section, but the requester will be referred to the Archivist for copies of the released document, with portions excised. The receiving office will transmit such documents, with portions marked to be excised, to Archives which will transmit them with portions excised to the Presidential Library for its records and for use in the case of further similar requests.

(5) The Security Officer or his designee shall also coordinate requests from other agencies seeking the views of OMSN as to declassification of documents originated by such other agencies but involving information of primary subject matter interest to OMSN. The Security Officer or his designee will transmit the documents to the reviewing individual for a determination as to declassification and will coordinate the reply of OMSN to the requesting agency.

(e) *Appeals*. (1) The President's Personal Representative for Micronesian Status Negotiations shall receive appeals for denial of documents by OMSN. Such appeals shall be addressed to President's Personal Representative for Micronesian Status Negotiations, Suite 3356, Interior Department Building, Washington, DC 20240. The appeal must be received in OMSN within 60 days of the date of the original denial letter or the final release of documents, whichever is later.

(2) Appeals shall be decided within 30 days of their receipt.

(f) *Fees*. (1) Fees for the location and reproduction of information which is the subject of a mandatory review request shall be assessed according to the following schedule:

(i) Search for records: $5.00 per hour when the search is conducted by a clerical employee; $8.00 per hour when the search is conducted by a professional employee. No fee shall be assessed for searches of less than one hour.

(ii) Reproduction of documents: Documents will be reproduced at a rate of $.25 per page for all copying of four pages or more. No fee shall be assessed for reproducing documents which are three pages or less, or for the first three pages of longer documents.

(2) Where it is anticipated that the fees chargeable under this section will amount to more than $25.00, and the requestor has not indicated in advance a willingness to pay fees as high as are anticipated, the requestor shall be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In instances where the estimated fees will greatly exceed $25.00, an advance deposit may be required. Dispatch of such a notice or request shall suspend the running of the period for response by OMSN until a reply is received from the requestor.

(3) Remittance shall be in the form either of a personal check or bank draft on a bank in the United States, or a postal money order. Remittance shall be made payable to Treasurer of the United States and mailed to the address noted in paragraph (b)(1) of this section.

(4) A receipt for fees paid will be provided only upon request. Refund of fees for services actually rendered will not be made.

(5) OMSN may waive all or part of any fee provided for in this section when it is deemed to be in either the interest of OMSN or of the general public.

§ 2700.34 Downgrading authority.

The Security Officer, OMSN is authorized to downgrade OMSN originated documents after consultation with the staff member who is charged with functional responsibility for the subject matter under question.

Subpart E—Safeguarding

§ 2700.41 General restrictions on access.

(a) *Determination of need-to-know*. Classified information shall be made available to a person only when the possessor of the classified information establishes in each instance, except as provided in section 4–3 of E.O. 12065,

that access is essential to the accomplishment of official Government duties or contractual obligations.

(b) *Determination of Trustworthiness.* A person is eligible for access to classified information only after a showing of trustworthiness as determined by the President's Personal Representative for Micronesian Status Negotiations based upon appropriate investigations in accordance with applicable standards and criteria.

§ 2700.42 Responsibility for safeguarding classified information.

(a) *General Policy.* The specific responsibility for the maintenance of the security of classified information rest with each person having knowledge or physical custody therof, no matter how obtained. The ultimate responsibility for safeguarding classified information rests on each supervisor to the same degree that supervisor is charged with functional responsibility.

(b) *Security and Top Secret Control Officers.* The Director, OMSN, and the Status Liaison Officer, Saipan, are assigned specific security responsibilities as Security Officer and Top Secret Control Officer.

(c) *Handling.* All documents bearing the terms "Top Secret," "Secret" and "Confidential" shall be delivered to the Top Secret Control Officer or his designee immediately upon receipt. All potential recipients of such documents shall be advised of the names of such designees and updated information as necessary. In the event that the Top Secret Control Officer or his designees are not available to receive such documents, they shall be turned over to the office supervisor and secured, unopened, in a designated combination safe located in OMSN or SLNO, as appropriate until the Top Secret Control Officer is available. All materials not immediately deliverable to the Top Secret Control Officer shall be delivered at the earliest opportunity. Under no circumstances shall classified material that cannot be delivered to the Top Secret Control Officer be stored other than in the designated safe.

(d) *Storage.* All classified documents shall be stored in the designated combination safe or safes located in OMSN or SLNO as appropriate. The combination shall be changed as required by ISOO Directive No. 1, section IV F (5)(a). The combinations shall be known only to the Security Officer and his designees with the appropriate security clearance.

(e) *Security Education Program.* The Security Officer shall establish a program of briefings to familiarize personnel with the provisions of E.O. 12065 and implementing directives. Such briefings shall be held once per year, or more frequently. Before any new or newly assigned employee enters on duty, he shall be given instruction in sufficient detail in security procedures and practices to inform him of his responsibilities arising from his access to classified data.

(f) *Access by Historical Researchers and Former Presidential Appointees.* In keeping with provisions 4–301 and 4–302 of E.O. 12065, the President's Personal Representative for Micronesian Status Negotiations shall designate appropriate officials to determine, prior to granting access to classified information, the propriety of such action in the interest of national security and assurance of the recipient's trustworthiness and need-to-know.

§ 2700.43 Reproduction controls.

OMSN and SLNO shall maintain records to show the number and distribution of all OMSN originated classified documents. Reproduction of classified material shall take place only in accordance with section 4–4 of E.O. 12065 and any limitations imposed by the originator. Should copies be made, they are subject to the same controls as the original document. Records showing the number of distribution of copies shall be maintained by the Office Supervisor and the log stored with the original documents. These measures shall not restrict reproduction for the purposes of mandatory review.

§ 2700.44 Administrative sanctions.

Officers and employees of the United States Government assigned to OMSN shall be subject to appropriate administrative sanctions if they knowingly and willingly commit a violation under section 5–5 of E.O. 12065. These sanctions may include reprimand, suspension without pay, removal, termination

of classification authority, or other sanction in accordance with applicable law or the applicable regulations of the agency from which they are assigned to OMSN.

Subpart F—Implementation and Review

§ 2700.51 Information Security Oversight Committee.

The OMSN Information Security Oversight Committee shall be chaired by the Security Officer, OMSN. The Committee shall be responsible for acting on all suggestions and complaints concerning the administration of the OMSN information security program. The chairperson shall also be responsible for conducting an active oversight program to ensure effective implementation of E.O. 12065.

§ 2700.52 Classified Review Committee.

The OMSN Classification Review Committee shall be chaired by the President's Personal Representative for Micronesian Status Negotiations. The Committee shall decide appeals from denials of declassification requests submitted pursuant to section 3–5 of E.O. 12065. The Committee shall consist of the President's Personal Representative, Department of Defense/Legal Advisor and Political/Economic Advisor.

CHAPTER XXVIII—OFFICE OF THE VICE PRESIDENT OF THE UNITED STATES

Part		*Page*
2800	Security procedures	585

PART 2800—SECURITY PROCEDURES

Sec.
2800.1 Purpose.
2800.2 Guiding directives.
2800.3 Policy.
2800.4 General information.
2800.5 Policies.
2800.6 Delegation of classification and declassification authority.
2800.7 Designation of chairperson for Ad Hoc Committees.
ATTACHMENT 1 TO PART 2800—EMPLOYMENT AGREEMENT & INDOCTRINATION STATEMENT
ATTACHMENT 2 TO PART 2800—SECURITY TERMINATION STATEMENT
ATTACHMENT 3 TO PART 2800—SAMPLE

AUTHORITY: EO 12065, 43 FR 28949, 3 CFR, 1978 Comp., p. 190; (Information Security Oversight Office, Directive No. 1, 43 FR 46280, 32 CFR ch. II.

SOURCE: 44 FR 66591, Nov. 20, 1979, unless otherwise noted.

§ 2800.1 Purpose.

To establish procedures and provide guidance for the security of classified information and material within the Office of the Vice President.

§ 2800.2 Guiding directives.

(a) Executive Order 12065, June 28, 1978, Subject: National Security Information.

(b) Information Security Oversight Office, Directive No. 1, October 2, 1978, Subject: National Security Information.

§ 2800.3 Policy.

The classification, declassification, safeguarding and handling of classified information within the Office of the Vice President will comply with the letter and spirit of those directives listed in § 2800.2. All personnel of the Office of the Vice President are responsible individually for complying with the provisions of these regulations are in all respects. The provisions of these regulations applicable to all personnel assigned or detailed to the Office of the Vice President.

§ 2800.4 General information.

(a) *Staff Security Officer/Top Secret Control Officer*. A Vice Presidential Staff Security Officer and Assistant Staff Security Officer will be assigned to perform the duties as outlined in these regulations. They will normally be on the staff of the Assistant to the Vice President for National Security Affairs. The Staff Security Officer and Assistant Staff Security Officer will serve as Top Secret Control Officer and Assistant Top Secret Control Officer and custodians of classified material for the Office of the Vice President respectively, and will be responsible for the overall supervision of the Top Secret Control program. They will maintain positive control over the movement of all Top Secret material under their jurisdiction.

(b) *Custodian, Office of the Assistant to the Vice President for Congressional Relations*. The Assistant to the Vice President for Congressional Relations, Office of the President of the Senate, will be designated as Custodian of classified material for that office. He will be responsible for compliance with the instructions contained herein. In this capacity, he will be charged with safeguarding classified material necessary to the operation of the office.

(c) *National Security Classifications*. Classifications of National Security Information are defined in Executive Order 12065, sections 1–102 through 1–104.

(d) *Prohibited Markings*. (1) The caveats "FOR OFFICIAL USE ONLY" and "ADMINISTRATIVELY RESTRICTED" are used within the Office of the Vice President to designate certain unclassified information which requires control. These caveats will under no circumstances be applied to information which qualifies as classified information. Further, neither they nor other terms will be used in conjunction with the prescribed security classifications of CONFIDENTIAL, SECRET and TOP SECRET.

(2) Unclassified information bearing either of the foregoing administrative designations cannot be protected from release under the national security exemption of the Freedom of Information Act (although other exemptions may be available).

(e) *Security Clearances*. No person shall be given access to classified information or material unless a favorable background investigation has been

completed determining that the individual is trustworthy and that access is necessary for the performance of official duties.

(1) *Security Clearance Procedures.* (i) The Counsel to the Vice President will:

(A) Be responsible for the processing of full field investigations for personnel assigned to the Vice President's staff. Department of Defense detailees are processed by the Defense Investigative Service.

(B) Inform the Staff Security Office of individuals whose full field investigations have been satisfactorily completed and approved and of any subsequent changes.

(C) Notify the Staff Security Office as soon as he/she is aware that a staff member is planning to terminate his/her employment.

(ii) The Staff Security Office will provide newly cleared persons with a security orientation briefing covering policy and procedures for handling classified information and material. After the briefing individuals will sign a Statement of Understanding of Security Procedures (Attachment 1). This statement will be kept on file by the Staff Security Office.

(iii) There is no such thing as an "Interim Security Clearance" for persons employed by or detailed to the Office of the Vice President. Under *no* circumstances will uncleared persons be given access to classified material. Access to classified material will be denied until the individual has had a satisfactorily completed background investigation, has received the security orientation briefing and signed the Statement of Understanding of Security Procedures.

(iv) The Staff Security Office, as part of an individual's departure debriefing, will remind them of their continuing responsibilities to protect classified information to which they have had access during the performance of their official duties. After being debriefed, the individual will sign a Security Termination Statement acknowledging his responsibilities (Attachment 2).

(2) Satisfactory completion of a background investigation does not in itself grant an individual access to classified information. Individual clearances for access to classified information or material will be controlled by the Staff Security Office and certified in writing on an individual basis.

(f) *Access to Classified Material.* Each member of the staff who has custody or possession of classified information is responsible for providing the required degree of protection from unauthorized disclosure at all times.

(1) Classified information and material will only be disclosed to an individual after it has been determined that the individual possesses the required clearance and has a valid "need to know." Persons releasing the information shall be responsible in every case for determining the recipient's eligibility for access.

(2) Access to Sensitive Compartmented Intelligence Information will be controlled by the Assistant to the Vice President for National Security Affairs.

(g) *Custody and safekeeping of Classified Material.* (1) Classified material addressed to the Office of the Vice President will normally be delivered to and receipted for by the Staff Security Office where it will be entered into the classified material control system.

(i) Staff members receiving classified material from any source by any means will personally deliver such material to the Staff Security Office for appropriate entry into the classified control system.

(ii) Conversely, members of the staff desiring to transmit classified material will deliver the material to the Staff Security Office for handling in accordance with paragraph (h)(5) of this section.

(2) *Storage of Classified Material.* (i) Classified material will be stored only in accordance with the provisions of ISOO Directive No. 1, paragraph IV–F–1 through 4.

(ii) Filing of unclassified material in security containers is prohibited except where the unclassified material is an integral part of a file which contains classified material. If extenuating circumstances necessitate the use of a security container for storing only unclassified material, the container will be marked with a sign stating "This container is not used to store

classified material" or "Do not store classified material in this container."

(3) *Record of safe locations.* The Staff Security Office will assign numbers to all security containers used to store classified material in the Office of the Vice President. A record of safe numbers, locations and date of last combination change will be maintained in the Staff Security Office.

(4) *Changing of lock combinations.* Combinations of security containers will be changed by the Staff Security Office or the Secret Service. This service may be requested by contacting the Staff Security Office. Combinations will be changed in accordance with the provisions of ISOO Directive No. 1, paragraph IV–F–5.

(5) *Records of combinations.* Records of combinations shall be maintained by the Staff Security Office. Whenever a combination is changed, the new combination and other required information will be recorded on GSA Optional Form 63. The sealed envelope will then be delivered to the Staff Security Office for retention in the vault safe.

(6) *Custodians.* Each container used for storage of classified material within the Office of the Vice President will have assigned a primary and alternate custodian. Responsibility for security of these containers shall rest with those persons, and their names shall be affixed on the outside of the top drawer of each container positioned so as to be readily discernible. Optional Form 63 shall be used for this purpose.

(h) *Handling of Classified Material*—(1) *Use of cover sheets.* A separate cover sheet indicating the classification of the material will be fastened to the top page of cover of each CONFIDENTIAL, SECRET or TOP SECRET document.

(2) *Unattended documents.* Classified material will be under the direct supervision of a person with an appropriate security clearance and a verified need-to-know at all times when in use. Special care will be taken to insure that classified material is not left unsecured or unattended in an office.

(3) *Working papers.* Working papers are documents, including drafts, photographs, etc., created to assist in the formulation and preparation of finished papers. Working papers containing classified information will be marked with the appropriate classification and provided the same degree of protection as that given to other documents of an equal category of classification.

(4) *Communications security.* Classified information shall not be discussed over any voice communications device except as authorized over *approved* secure communications circuits. This restriction also applies to electrical transmission of classified material via any unsecure circuitry involving teletypes, DEX equipment or other systems of a like nature. Appropriate secure facilities for the discussion or transmittal of classified material may be arranged by contacting the Staff Security Office.

(5) *Transmittal of Classified Material*—(i) *Outside the Office of the Vice President and the White House Complex.* The Staff Security Office is responsible for transmitting or transferring all classified material outside the Office of the Vice President and the White House Complex in accordance with the provisions of ISOO Directive No. 1, paragraphs I, G and H.

(ii) *Within the Office of the Vice President and the White House Complex.* Transfer or movement of classified material will be accomplished only by properly cleared persons handcarrying the material to the recipient. The material shall be carried in an envelope marked with the appropriate classification. *Use of see through messenger envelopes is not authorized.* Recipients will sign a receipt (GSA Optional Form 112) for all material classified SECRET and TOP SECRET. Whenever TOP SECRET material is transferred, the Staff Security Office will be notified in order to maintain accurate accountability of the material. Classified material will never be delivered to an uncleared person, left in an unoccupied office, or sent through unclassified mail delivery/distribution systems.

(iii) Staff members requiring the use of classified material at conferences or meetings held outside the Washington, DC Metropolitan area and who intend to use commercial transportation shall provide the material to the Staff Security Office far enough in advance to assure that the material will be available

on or before the date needed. This requirement does not apply when utilizing government/military transportation. In this case, material may be handcarried. The Staff Security Office will brief each staff member prior to departure concerning security requirements or arrangements needed to safeguard the material while away from his office. For meetings or conferences within the Washington, DC Metropolitan area, members may handcarry classified material. Use of classified material during a conference or meeting requires increased awareness and precautionary handling to avoid security violations and/or compromises. Staff members using classified material during a meeting or conference are responsible for ensuring that the material is properly protected at all times, and that personnel present posses appropriate clearances for the material being presented.

(iv) *Visits to foreign countries.* Special precautions must be taken when visiting foreign countries to ensure classified material is protected at all times. For all visits to foreign countries a member of the staff will be appointed as custodian for all classified material required for the success of the mission. This individual will be the holder of a diplomatic passport which exempts him from customs inspections. Individual so designated will coordinate with United States embassy personnel in the country to be visited for securing of classified material within the embassy compound or other appropriate secure area during the course of the visit.

(6) *Preparation and marking of Classified Material.* All classified material originating within the office of the Vice President will be prepared and marked by properly authorized and cleared personnel in accordance with ISOO Directive No. 1, paragraphs I, G, and H. A sample letter is attached for your guidance (Attachment 3). Derivitive information will be prepared and classified in accordance with ISOO Directive No. 1, paragraphs II A through C. Questions concerning procedures should be directed to the Staff Security Office.

(7) *Reproduction of Classified Material.* (i) Reproduction of classified material will be accomplished only by properly cleared persons.

(ii) Reproduction of TOP SECRET material will be accomplished only by a member of the Staff Security Office or a designated representative of that office.

(iii) Accountability of reproduced classified material will be maintained by informing the Staff Security Office of the reproduction of SECRET and TOP SECRET material, the number of copies reproduced and their disposition.

(iv) Reproduction machines can retain the imagery of material passed through them. Therefore, to avoid inadvertent disclosure of classified information through subsequent use of machines, staff members will *always* run machines through four cycles (four blank pages) after the last page of the classified material has been reproduced. These pages will be destroyed in the same manner as classified material.

(8) *Destruction of Classified Material.* (i) SECRET and TOP SECRET material will be given to the Staff Security Office for destruction to insure destruction is properly recorded and destroyed material is removed from the classified control system.

(ii) CONFIDENTIAL material may be destroyed in the holder's office by tearing lengthwise and placing in a "Burn Bag" specifically designated for classified material.

(iii) Classified waste material will be separated from other office waste material and placed in "Burn Bags." Classified waste material includes working papers, notes, drafts of classified correspondence, carbon paper, typewriter ribbons and any other material containing information requiring destruction. "Burn Bags" will be collected daily by a member of the White House Executive Protective Service who will then dispose of the bags in a secure facility.

(iv) *Typewriter ribbons.* Classified material can be reproduced from imprints on used typewriter ribbons. Therefore, ribbons which are used in the preparation of classified material must be safeguarded accordingly, i.e., they will

be stored in a safe at the close of business, destroyed as classified waste when no longer serviceable, etc.

(9) *Inventories*. The Staff Security Office will conduct inventories of all TOP SECRET material charged to the Office of the Vice President at least annually to determine the adequacy of control procedures and insure accountability.

(i) *Loss or compromise*. Any person who has knowledge of loss of possible compromise of classified information shall promptly report the circumstances to the Staff Security Office for appropriate action in accordance with ISOO Directive No. 1, paragraph IV, H.

(j) *Penalties*. Any individual breach of security may warrant penalties up to and including the separation of the individual from his employment or criminal prosecution.

(k) *Special access*. Special access authority is required for release of Sensitive Compartmented Intelligence Information. The names of personnel cleared for access to this category of information are on file in the Staff Security Office.

§ 2800.5 Policies.

(a) *Basic policy*. Except as provided in the Atomic Energy Act of 1943, as amended, Executive Order 12065, as implemented by ISOO Directive No. 1, provides the only basis for classifying information. It is the policy of this office to make available to the public as much information concerning its activities as possible consistent with the need to protect the national security. Accordingly, security classification shall be applied only to protect the national security.

(b) *Duration of classification*. Classification shall not be continued longer than necessary for the protection of national security. Each decision to classify requires a simultaneous determination of the duration such classification must remain in effect. For further guidance, refer to sections 1–401 and 1–402, E.O. 12065.

(c) *Declassification*. Declassification of information shall be given emphasis comparable to that accorded to classification. Decisions concerning declassification shall be based on the loss of the information's sensitivity with the passage of time or upon the occurrence of a declassification event. For further guidance, refer to sections 3–102, 3–103 and 3–104 of E.O. 12065.

(d) *Systematic review for declassification*. Systematic review for declassification will be in accordance with sections 3–204, 3–401 and 3–503 of E.O. 12065.

(e) *Mandatory review requests*. Requests from a member of the public, a government employee, or an agency, to declassify and release information will be acted upon within 60 days provided the request reasonably identifies the information. After review, the information or any reasonably segregable portion thereof that no longer requires protection, shall be declassified and released, except as provided in section 3–503, E.O. 12065, unless withholding is otherwise warranted under applicable law.

(f) *Classification guides*. The Chief Counsel, National Security Council, has determined that, in view of the limited amount of material originally classified by this office, the preparation and publication of classification guides is not required.

(g) *Access to Classified Information by historical researchers and former Presidential appointees*. Access may be granted under the provisions of section 4–3 of E.O. 12065; however, access is permissive and not mandatory.

§ 2800.6 Delegation of classification and declassification authority.

Pursuant to the provisions of sections 1–201 and 3–103 of E.O. 12065 of June 28, 1978, the following officials within the Office of the Vice President, are designated to originally classify and declassify information as "SECRET" and/or "CONFIDENTIAL":

(a) Chief of Staff to the Vice President.

(b) Counsel to the Vice President.

(c) Executive Assistant to the Vice President.

(d) Assistant to the Vice President for National Security Affairs.

(e) Assistant to the Vice President for Issues Development and Domestic Policy.

(f) Additionally, the following individuals are designated to declassify

"SECRET" and/or "CONFIDENTIAL" information in accordance with section 3–103 of E.O. 12065:

(i) Staff Security Officer/Top Secret Control Officer.

(ii) Assistant Staff Security Officer/Assistant Top Secret Control Officer.

§ 2800.7 Designation of chairperson for Ad Hoc Committees.

The Counsel to the Vice President is designated as the responsible official to chair Ad Hoc Committees as necessary to act on all suggestions and complaints with respect to the administration of the information security program.

ATTACHMENT 1 TO PART 2800—EMPLOYMENT AGREEMENT & INDOCTRINATION STATEMENT

Attachment 1

OFFICE OF THE VICE PRESIDENT

WASHINGTON

EMPLOYMENT AGREEMENT & INDOCTRINATION STATEMENT

As consideration for employment with the Office of the Vice President and as a condition for continued employment I hereby declare that I intend to be governed by and I will comply with the following provisions:

1. By virtue of the performance of my official duties while employed by or assigned to the Office of the Vice President, I expect to be the recipient of classified information, materials, plans or intelligence data which concern the national defense and foreign relations of the United States and which are the property of the United States Government. I have been furnished and I understand the provisions of (a) the Espionage Act, Title 18, USC, Section 793 and 794, concerning the disclosure of information relating to the national defense of the United States and the penalties provided for violations thereof; (b) Title 18, USC, Section 1001, concerning the making of false statements; and (c) Executive Order 12065 entitled "National Security Information."

2. I understand that one of the obligations of my employment by or assignment to the Office of the Vice President is strict compliance with the provisions of Federal laws, directives and regulations with respect to the safeguarding of classified information of the United States Government from unauthorized disclosure.

3. I agree that in the course of my employment by or assignment to the Vice President's staff and subsequent thereto, I will not divulge, publish or reveal by any means any classified information, intelligence data or knowledge which I may acquire by virtue of such employment, except as authorized by competent authority pursuant to the provisions of Federal statutes, regulations and directives. Should an attempt be made by any unauthorized person to obtain classified information from me I will report such incident to the Staff Security Officer for the Office of the Vice President, the nearest office of the Federal Bureau of Investigation or to the nearest U.S. Embassy, Consulate or U.S. Military Command.

2

4. I understand that upon the termination of my employment by or assignment to the Vice President's staff, none of the classified information or material to which I have access or which I have originated in the course of that employment or assignment may be removed or retained by me, except as authorized by competent authority.

5. I understand that a change in my assignment or employment will not relieve me of my obligations under this statement, and that the provisions of this statement will remain binding upon me after termination of my service with the Office of the Vice President and my services with the United States Government.

_____
Signature

Witnessed and accepted in behalf of the Vice President of the United States on

_____, 19__, by _____

ATTACHMENT 2 TO PART 2800—SECURITY TERMINATION STATEMENT

Attachment 2

OFFICE OF THE VICE PRESIDENT

WASHINGTON

SECURITY TERMINATION STATEMENT

On the occasion of the termination of my employment by or assignment to the staff of the Office of the Vice President, I hereby state that:

1) I am not retaining possession of or taking with me any document or other material containing classified information affecting the national defense or foreign relations of the United States.

2) I will not hereafter in any manner reveal or divulge any such classified information of which I have gained knowledge during my employment by or assignment to the Office of the Vice President, except as authorized by competent authority pursuant to the provisions of Federal statutes, regulations and directives. Should an attempt be made by any unauthorized person to obtain such classified information from me, I will report the incident to the Staff Security Officer of the Office of the Vice President, the nearest office of the Federal Bureau of Investigation, or the nearest U.S. Embassy, Consulate, or U.S. Military Command.

3) I have read and understand the provisions of the Espionage Act, Title 18, USC, Sections 793 and 794, concerning unlawful disclosure of information affecting the national defense, and the provisions of Title 18, USC, Section 1001, regarding the making of false statements. With this understanding, I state that the information I have given herein is, to the best of my knowledge and belief, correct and complete and is being furnished to the U.S. Government for purposes of protection of classified information which affects the national defense, or foreign relations, of the United States.

date	signature
WITNESS	name (typed or printed)

ATTACHMENT 3 TO PART 2800—SAMPLE

SAMPLE **TOP SECRET** Attachment 3

OFFICE OF THE VICE PRESIDENT
WASHINGTON

January 25, 1979

MEMORANDUM FOR The Vice President

FROM: A. Staff Member

SUBJECT: Classified Markings (U)

Xxxx xxxxxxx xx x xxxxxxxxxx xxxxxxxx xxxxx xx xxxxxx xx xxxxxxxx xxx xxxxxxx xxxxxxxxxxxxx xx xxxxxxxxxx xx xxxxxxx. Xxxx xxxxxxx, xxxx xxxxxxxxx xx xxxxxx xx xx xx xxxxxxxxx xxxxxxxxxxx xxxxxxxxxxx xx xxxxxx xx. (C)

Xxxx xxxxxxx xxxxxxx xx xxxx xxxx xxxxxxxx xxxxx xxxxxxxx xxxxxxxx xxx xxx xxxxxxxxxxx xxxxxxxxx. Xxxx xxx-xxxx xxxxx xxxxx xx xxxxxxxxxxx xxxxxxxxxx xx xxxxxxxxxxx xxxxxxxxx xxxxxx xxxxxxxxx xxxxxxx. (S)

Xxxxx xxxxxxxxx xxxxx xx xxxxxxx xx xxxxxxxxxx xxxxxxx xxxxxxxxx xx xxx xxxxxx. (U)

X xx xxxxxxxx xxx xxxxxxxxx xxxxxxxxx xx xx xxxxx xxxxxxx xxxx xxx xxxx xxxxxx xxxxx xxxxxxxxxx xx xxx xxx xxxxxxxx xx xxxxxx. Xxxxxxxx xx xxx xxx xxxxxx xxxxxxxxxxxx xxxxxxxx xxx xxxx xxxxxx xxxxx xxxxxxxxxx xxx xxxxxxx xxxxx xxx xxx xxxxxxx xxxxxxxxxx x xxxxxxxx. Xxxxxx xxxxx xxxx xxxxxxxx xxxxx. (TS)

Classified by Director, XXX
Declassify on January 24, 1984
Review for Declassification on January 24, 1984
Downgrade to_____on_____

Enter appropriate terminology

SAMPLE **TOP SECRET** SAMPLE

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
List of CFR Sections Affected

Table of CFR Titles and Chapters

(Revised as of July 1, 2011)

Title 1—General Provisions

I Administrative Committee of the Federal Register (Parts 1—49)
II Office of the Federal Register (Parts 50—299)
III Administrative Conference of the United States (Parts 300—399)
IV Miscellaneous Agencies (Parts 400—500)

Title 2—Grants and Agreements

SUBTITLE A—OFFICE OF MANAGEMENT AND BUDGET GUIDANCE FOR GRANTS AND AGREEMENTS

I Office of Management and Budget Governmentwide Guidance for Grants and Agreements (Parts 100—199)
II Office of Management and Budget Circulars and Guidance (200—299)

SUBTITLE B—FEDERAL AGENCY REGULATIONS FOR GRANTS AND AGREEMENTS

III Department of Health and Human Services (Parts 300— 399)
IV Department of Agriculture (Parts 400—499)
VI Department of State (Parts 600—699)
VII Agency for International Development (Parts 700—799)
VIII Department of Veterans Affairs (Parts 800—899)
IX Department of Energy (Parts 900—999)
XI Department of Defense (Parts 1100—1199)
XII Department of Transportation (Parts 1200—1299)
XIII Department of Commerce (Parts 1300—1399)
XIV Department of the Interior (Parts 1400—1499)
XV Environmental Protection Agency (Parts 1500—1599)
XVIII National Aeronautics and Space Administration (Parts 1880—1899)
XX United States Nuclear Regulatory Commission (Parts 2000—2099)
XXII Corporation for National and Community Service (Parts 2200—2299)
XXIII Social Security Administration (Parts 2300—2399)
XXIV Housing and Urban Development (Parts 2400—2499)
XXV National Science Foundation (Parts 2500—2599)
XXVI National Archives and Records Administration (Parts 2600—2699)
XXVII Small Business Administration (Parts 2700—2799)
XXVIII Department of Justice (Parts 2800—2899)

Title 2—Grants and Agreements—Continued

Chap.	
XXX	Department of Homeland Security (Parts 3000—3099)
XXXI	Institute of Museum and Library Services (Parts 3100—3199)
XXXII	National Endowment for the Arts (Parts 3200—3299)
XXXIII	National Endowment for the Humanities (Parts 3300—3399)
XXXV	Export-Import Bank of the United States (Parts 3500—3599)
XXXVII	Peace Corps (Parts 3700—3799)
LVIII	Election Assistance Commission (Parts 5800—5899)

Title 3—The President

I	Executive Office of the President (Parts 100—199)

Title 4—Accounts

I	Government Accountability Office (Parts 1—99)
II	Recovery Accountability and Transparency Board (Parts 200—299)

Title 5—Administrative Personnel

I	Office of Personnel Management (Parts 1—1199)
II	Merit Systems Protection Board (Parts 1200—1299)
III	Office of Management and Budget (Parts 1300—1399)
V	The International Organizations Employees Loyalty Board (Parts 1500—1599)
VI	Federal Retirement Thrift Investment Board (Parts 1600—1699)
VIII	Office of Special Counsel (Parts 1800—1899)
IX	Appalachian Regional Commission (Parts 1900—1999)
XI	Armed Forces Retirement Home (Parts 2100—2199)
XIV	Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)
XV	Office of Administration, Executive Office of the President (Parts 2500—2599)
XVI	Office of Government Ethics (Parts 2600—2699)
XXI	Department of the Treasury (Parts 3100—3199)
XXII	Federal Deposit Insurance Corporation (Parts 3200—3299)
XXIII	Department of Energy (Parts 3300—3399)
XXIV	Federal Energy Regulatory Commission (Parts 3400—3499)
XXV	Department of the Interior (Parts 3500—3599)
XXVI	Department of Defense (Parts 3600— 3699)
XXVIII	Department of Justice (Parts 3800—3899)
XXIX	Federal Communications Commission (Parts 3900—3999)
XXX	Farm Credit System Insurance Corporation (Parts 4000—4099)
XXXI	Farm Credit Administration (Parts 4100—4199)
XXXIII	Overseas Private Investment Corporation (Parts 4300—4399)

Title 5—Administrative Personnel—Continued

Chap.	
XXXIV	Securities and Exchange Commission (Parts 4400—4499)
XXXV	Office of Personnel Management (Parts 4500—4599)
XL	Interstate Commerce Commission (Parts 5000—5099)
XLI	Commodity Futures Trading Commission (Parts 5100—5199)
XLII	Department of Labor (Parts 5200—5299)
XLIII	National Science Foundation (Parts 5300—5399)
XLV	Department of Health and Human Services (Parts 5500—5599)
XLVI	Postal Rate Commission (Parts 5600—5699)
XLVII	Federal Trade Commission (Parts 5700—5799)
XLVIII	Nuclear Regulatory Commission (Parts 5800—5899)
XLIX	Federal Labor Relations Authority (Parts 5900—5999)
L	Department of Transportation (Parts 6000—6099)
LII	Export-Import Bank of the United States (Parts 6200—6299)
LIII	Department of Education (Parts 6300—6399)
LIV	Environmental Protection Agency (Parts 6400—6499)
LV	National Endowment for the Arts (Parts 6500—6599)
LVI	National Endowment for the Humanities (Parts 6600—6699)
LVII	General Services Administration (Parts 6700—6799)
LVIII	Board of Governors of the Federal Reserve System (Parts 6800—6899)
LIX	National Aeronautics and Space Administration (Parts 6900—6999)
LX	United States Postal Service (Parts 7000—7099)
LXI	National Labor Relations Board (Parts 7100—7199)
LXII	Equal Employment Opportunity Commission (Parts 7200—7299)
LXIII	Inter-American Foundation (Parts 7300—7399)
LXIV	Merit Systems Protection Board (Parts 7400—7499)
LXV	Department of Housing and Urban Development (Parts 7500—7599)
LXVI	National Archives and Records Administration (Parts 7600—7699)
LXVII	Institute of Museum and Library Services (Parts 7700—7799)
LXVIII	Commission on Civil Rights (Parts 7800—7899)
LXIX	Tennessee Valley Authority (Parts 7900—7999)
LXX	Court Services and Offender Supervision Agency for the District of Columbia (Parts 8000—8099)
LXXI	Consumer Product Safety Commission (Parts 8100—8199)
LXXII	Special Inspector General for Iraq Reconstruction (Parts 8200—8299)
LXXIII	Department of Agriculture (Parts 8300—8399)
LXXIV	Federal Mine Safety and Health Review Commission (Parts 8400—8499)
LXXVI	Federal Retirement Thrift Investment Board (Parts 8600—8699)
LXXVII	Office of Management and Budget (Parts 8700—8799)
LXXX	Federal Housing Finance Agency (Parts 8700—8799)
LXXXII	Special Inspector General for Iraq Reconstruction (Parts 9200—9299)

Title 5—Administrative Personnel—Continued

Chap.

XCVII Department of Homeland Security Human Resources Management System (Department of Homeland Security—Office of Personnel Management) (Parts 9700—9799)

XCIX Department of Defense Human Resources Management and Labor Relations Systems (Department of Defense—Office of Personnel Management) (Parts 9900—9999)

Title 6—Domestic Security

I Department of Homeland Security, Office of the Secretary (Parts 0—99)

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE (PARTS 0—26)

SUBTITLE B—REGULATIONS OF THE DEPARTMENT OF AGRICULTURE

I Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

II Food and Nutrition Service, Department of Agriculture (Parts 210—299)

III Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

IV Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

V Agricultural Research Service, Department of Agriculture (Parts 500—599)

VI Natural Resources Conservation Service, Department of Agriculture (Parts 600—699)

VII Farm Service Agency, Department of Agriculture (Parts 700—799)

VIII Grain Inspection, Packers and Stockyards Administration (Federal Grain Inspection Service), Department of Agriculture (Parts 800—899)

IX Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

X Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)

XI Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)

XIV Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)

XV Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)

XVI Rural Telephone Bank, Department of Agriculture (Parts 1600—1699)

XVII Rural Utilities Service, Department of Agriculture (Parts 1700—1799)

Title 7—Agriculture—Continued

Chap.	
XVIII	Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)
XX	Local Television Loan Guarantee Board (Parts 2200—2299)
XXVI	Office of Inspector General, Department of Agriculture (Parts 2600—2699)
XXVII	Office of Information Resources Management, Department of Agriculture (Parts 2700—2799)
XXVIII	Office of Operations, Department of Agriculture (Parts 2800—2899)
XXIX	Office of Energy Policy and New Uses, Department of Agriculture (Parts 2900—2999)
XXX	Office of the Chief Financial Officer, Department of Agriculture (Parts 3000—3099)
XXXI	Office of Environmental Quality, Department of Agriculture (Parts 3100—3199)
XXXII	Office of Procurement and Property Management, Department of Agriculture (Parts 3200—3299)
XXXIII	Office of Transportation, Department of Agriculture (Parts 3300—3399)
XXXIV	National Institute of Food and Agriculture (Parts 3400—3499)
XXXV	Rural Housing Service, Department of Agriculture (Parts 3500—3599)
XXXVI	National Agricultural Statistics Service, Department of Agriculture (Parts 3600—3699)
XXXVII	Economic Research Service, Department of Agriculture (Parts 3700—3799)
XXXVIII	World Agricultural Outlook Board, Department of Agriculture (Parts 3800—3899)
XLI	[Reserved]
XLII	Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture (Parts 4200—4299)
L	Rural Business-Cooperative Service, Rurual Housing Service, and Rural Utilities Service, Department of Agriculture (Parts 5000—5099)

Title 8—Aliens and Nationality

I	Department of Homeland Security (Immigration and Naturalization) (Parts 1—499)
V	Executive Office for Immigration Review, Department of Justice (Parts 1000—1399)

Title 9—Animals and Animal Products

I	Animal and Plant Health Inspection Service, Department of Agriculture (Parts 1—199)
II	Grain Inspection, Packers and Stockyards Administration (Packers and Stockyards Programs), Department of Agriculture (Parts 200—299)

Title 9—Animals and Animal Products—Continued

Chap.

III Food Safety and Inspection Service, Department of Agriculture (Parts 300—599)

Title 10—Energy

I Nuclear Regulatory Commission (Parts 0—199)

II Department of Energy (Parts 200—699)

III Department of Energy (Parts 700—999)

X Department of Energy (General Provisions) (Parts 1000—1099)

XIII Nuclear Waste Technical Review Board (Parts 1303—1399)

XVII Defense Nuclear Facilities Safety Board (Parts 1700—1799)

XVIII Northeast Interstate Low-Level Radioactive Waste Commission (Parts 1800—1899)

Title 11—Federal Elections

I Federal Election Commission (Parts 1—9099)

II Election Assistance Commission (Parts 9400—9499)

Title 12—Banks and Banking

I Comptroller of the Currency, Department of the Treasury (Parts 1—199)

II Federal Reserve System (Parts 200—299)

III Federal Deposit Insurance Corporation (Parts 300—399)

IV Export-Import Bank of the United States (Parts 400—499)

V Office of Thrift Supervision, Department of the Treasury (Parts 500—599)

VI Farm Credit Administration (Parts 600—699)

VII National Credit Union Administration (Parts 700—799)

VIII Federal Financing Bank (Parts 800—899)

IX Federal Housing Finance Board (Parts 900—999)

XI Federal Financial Institutions Examination Council (Parts 1100—1199)

XII Federal Housing Finance Agency (Parts 1200—1299)

XIV Farm Credit System Insurance Corporation (Parts 1400—1499)

XV Department of the Treasury (Parts 1500—1599)

XVII Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development (Parts 1700—1799)

XVIII Community Development Financial Institutions Fund, Department of the Treasury (Parts 1800—1899)

Title 13—Business Credit and Assistance

I Small Business Administration (Parts 1—199)

III Economic Development Administration, Department of Commerce (Parts 300—399)

Title 13—Business Credit and Assistance—Continued

Chap.

IV Emergency Steel Guarantee Loan Board (Parts 400—499)

V Emergency Oil and Gas Guaranteed Loan Board (Parts 500—599)

Title 14—Aeronautics and Space

I Federal Aviation Administration, Department of Transportation (Parts 1—199)

II Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)

III Commercial Space Transportation, Federal Aviation Administration, Department of Transportation (Parts 400—499)

V National Aeronautics and Space Administration (Parts 1200—1299)

VI Air Transportation System Stabilization (Parts 1300—1399)

Title 15—Commerce and Foreign Trade

SUBTITLE A—OFFICE OF THE SECRETARY OF COMMERCE (PARTS 0—29)

SUBTITLE B—REGULATIONS RELATING TO COMMERCE AND FOREIGN TRADE

I Bureau of the Census, Department of Commerce (Parts 30—199)

II National Institute of Standards and Technology, Department of Commerce (Parts 200—299)

III International Trade Administration, Department of Commerce (Parts 300—399)

IV Foreign-Trade Zones Board, Department of Commerce (Parts 400—499)

VII Bureau of Industry and Security, Department of Commerce (Parts 700—799)

VIII Bureau of Economic Analysis, Department of Commerce (Parts 800—899)

IX National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)

XI Technology Administration, Department of Commerce (Parts 1100—1199)

XIII East-West Foreign Trade Board (Parts 1300—1399)

XIV Minority Business Development Agency (Parts 1400—1499)

SUBTITLE C—REGULATIONS RELATING TO FOREIGN TRADE AGREEMENTS

XX Office of the United States Trade Representative (Parts 2000—2099)

SUBTITLE D—REGULATIONS RELATING TO TELECOMMUNICATIONS AND INFORMATION

XXIII National Telecommunications and Information Administration, Department of Commerce (Parts 2300—2399)

Title 16—Commercial Practices

Chap.

I Federal Trade Commission (Parts 0—999)

II Consumer Product Safety Commission (Parts 1000—1799)

Title 17—Commodity and Securities Exchanges

I Commodity Futures Trading Commission (Parts 1—199)

II Securities and Exchange Commission (Parts 200—399)

IV Department of the Treasury (Parts 400—499)

Title 18—Conservation of Power and Water Resources

I Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

III Delaware River Basin Commission (Parts 400—499)

VI Water Resources Council (Parts 700—799)

VIII Susquehanna River Basin Commission (Parts 800—899)

XIII Tennessee Valley Authority (Parts 1300—1399)

Title 19—Customs Duties

I U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury (Parts 0—199)

II United States International Trade Commission (Parts 200—299)

III International Trade Administration, Department of Commerce (Parts 300—399)

IV U.S. Immigration and Customs Enforcement, Department of Homeland Security (Parts 400—599)

Title 20—Employees' Benefits

I Office of Workers' Compensation Programs, Department of Labor (Parts 1—199)

II Railroad Retirement Board (Parts 200—399)

III Social Security Administration (Parts 400—499)

IV Employees Compensation Appeals Board, Department of Labor (Parts 500—599)

V Employment and Training Administration, Department of Labor (Parts 600—699)

VI Office of Workers' Compensation Programs, Department of Labor (Parts 700—799)

VII Benefits Review Board, Department of Labor (Parts 800—899)

VIII Joint Board for the Enrollment of Actuaries (Parts 900—999)

IX Office of the Assistant Secretary for Veterans' Employment and Training Service, Department of Labor (Parts 1000—1099)

Title 21—Food and Drugs

Chap.

I Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)

II Drug Enforcement Administration, Department of Justice (Parts 1300—1399)

III Office of National Drug Control Policy (Parts 1400—1499)

Title 22—Foreign Relations

I Department of State (Parts 1—199)

II Agency for International Development (Parts 200—299)

III Peace Corps (Parts 300—399)

IV International Joint Commission, United States and Canada (Parts 400—499)

V Broadcasting Board of Governors (Parts 500—599)

VII Overseas Private Investment Corporation (Parts 700—799)

IX Foreign Service Grievance Board (Parts 900—999)

X Inter-American Foundation (Parts 1000—1099)

XI International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)

XII United States International Development Cooperation Agency (Parts 1200—1299)

XIII Millenium Challenge Corporation (Parts 1300—1399)

XIV Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400—1499)

XV African Development Foundation (Parts 1500—1599)

XVI Japan-United States Friendship Commission (Parts 1600—1699)

XVII United States Institute of Peace (Parts 1700—1799)

Title 23—Highways

I Federal Highway Administration, Department of Transportation (Parts 1—999)

II National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)

III National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

Title 24—Housing and Urban Development

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (PARTS 0—99)

SUBTITLE B—REGULATIONS RELATING TO HOUSING AND URBAN DEVELOPMENT

I Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

Title 24—Housing and Urban Development—Continued

Chap.

II Office of Assistant Secretary for Housing-Federal HousingCommissioner, Department of Housing and Urban Development (Parts 200—299)

III Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)

IV Office of Housing and Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development (Parts 400—499)

V Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

VI Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600—699) [Reserved]

VII Office of the Secretary, Department of Housing and Urban Development (Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

VIII Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs, Section 202 Direct Loan Program, Section 202 Supportive Housing for the Elderly Program and Section 811 Supportive Housing for Persons With Disabilities Program) (Parts 800—899)

IX Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—1699)

X Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700—1799)

XII Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)

XV Emergency Mortgage Insurance and Loan Programs, Department of Housing and Urban Development (Parts 2700—2799)

XX Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3899)

XXIV Board of Directors of the HOPE for Homeowners Program (Parts 4000—4099)

XXV Neighborhood Reinvestment Corporation (Parts 4100—4199)

Title 25—Indians

I Bureau of Indian Affairs, Department of the Interior (Parts 1—299)

II Indian Arts and Crafts Board, Department of the Interior (Parts 300—399)

III National Indian Gaming Commission, Department of the Interior (Parts 500—599)

IV Office of Navajo and Hopi Indian Relocation (Parts 700—799)

V Bureau of Indian Affairs, Department of the Interior, and Indian Health Service, Department of Health and Human Services (Part 900)

Title 25—Indians—Continued

Chap.

VI Office of the Assistant Secretary-Indian Affairs, Department of the Interior (Parts 1000—1199)

VII Office of the Special Trustee for American Indians, Department of the Interior (Parts 1200—1299)

Title 26—Internal Revenue

I Internal Revenue Service, Department of the Treasury (Parts 1—899)

Title 27—Alcohol, Tobacco Products and Firearms

I Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury (Parts 1—399)

II Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice (Parts 400—699)

Title 28—Judicial Administration

I Department of Justice (Parts 0—299)

III Federal Prison Industries, Inc., Department of Justice (Parts 300—399)

V Bureau of Prisons, Department of Justice (Parts 500—599)

VI Offices of Independent Counsel, Department of Justice (Parts 600—699)

VII Office of Independent Counsel (Parts 700—799)

VIII Court Services and Offender Supervision Agency for the District of Columbia (Parts 800—899)

IX National Crime Prevention and Privacy Compact Council (Parts 900—999)

XI Department of Justice and Department of State (Parts 1100—1199)

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR (PARTS 0—99)

SUBTITLE B—REGULATIONS RELATING TO LABOR

I National Labor Relations Board (Parts 100—199)

II Office of Labor-Management Standards, Department of Labor (Parts 200—299)

III National Railroad Adjustment Board (Parts 300—399)

IV Office of Labor-Management Standards, Department of Labor (Parts 400—499)

V Wage and Hour Division, Department of Labor (Parts 500—899)

IX Construction Industry Collective Bargaining Commission (Parts 900—999)

X National Mediation Board (Parts 1200—1299)

XII Federal Mediation and Conciliation Service (Parts 1400—1499)

XIV Equal Employment Opportunity Commission (Parts 1600—1699)

Title 29—Labor—Continued

Chap.

XVII Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)

XX Occupational Safety and Health Review Commission (Parts 2200—2499)

XXV Employee Benefits Security Administration, Department of Labor (Parts 2500—2599)

XXVII Federal Mine Safety and Health Review Commission (Parts 2700—2799)

XL Pension Benefit Guaranty Corporation (Parts 4000—4999)

Title 30—Mineral Resources

I Mine Safety and Health Administration, Department of Labor (Parts 1—199)

II Bureau of Ocean Energy Management, Regulation, and Enforcement, Department of the Interior (Parts 200—299)

IV Geological Survey, Department of the Interior (Parts 400—499)

VII Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)

XII Office of Natural Resources Revenue, Department of the Interior (Parts 1200—1299)

Title 31—Money and Finance: Treasury

SUBTITLE A—OFFICE OF THE SECRETARY OF THE TREASURY (PARTS 0—50)

SUBTITLE B—REGULATIONS RELATING TO MONEY AND FINANCE

I Monetary Offices, Department of the Treasury (Parts 51—199)

II Fiscal Service, Department of the Treasury (Parts 200—399)

IV Secret Service, Department of the Treasury (Parts 400—499)

V Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)

VI Bureau of Engraving and Printing, Department of the Treasury (Parts 600—699)

VII Federal Law Enforcement Training Center, Department of the Treasury (Parts 700—799)

VIII Office of International Investment, Department of the Treasury (Parts 800—899)

IX Federal Claims Collection Standards (Department of the Treasury—Department of Justice) (Parts 900—999)

X Financial Crimes Enforcement Network, Departmnent of the Treasury (Parts 1000—1099)

Title 32—National Defense

SUBTITLE A—DEPARTMENT OF DEFENSE

I Office of the Secretary of Defense (Parts 1—399)

V Department of the Army (Parts 400—699)

VI Department of the Navy (Parts 700—799)

Title 32—National Defense—Continued

Chap.

VII Department of the Air Force (Parts 800—1099)

SUBTITLE B—OTHER REGULATIONS RELATING TO NATIONAL DEFENSE

XII Defense Logistics Agency (Parts 1200—1299)

XVI Selective Service System (Parts 1600—1699)

XVII Office of the Director of National Intelligence (Parts 1700—1799)

XVIII National Counterintelligence Center (Parts 1800—1899)

XIX Central Intelligence Agency (Parts 1900—1999)

XX Information Security Oversight Office, National Archives and Records Administration (Parts 2000—2099)

XXI National Security Council (Parts 2100—2199)

XXIV Office of Science and Technology Policy (Parts 2400—2499)

XXVII Office for Micronesian Status Negotiations (Parts 2700—2799)

XXVIII Office of the Vice President of the United States (Parts 2800—2899)

Title 33—Navigation and Navigable Waters

I Coast Guard, Department of Homeland Security (Parts 1—199)

II Corps of Engineers, Department of the Army (Parts 200—399)

IV Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

Title 34—Education

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF EDUCATION (PARTS 1—99)

SUBTITLE B—REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION

I Office for Civil Rights, Department of Education (Parts 100—199)

II Office of Elementary and Secondary Education, Department of Education (Parts 200—299)

III Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)

IV Office of Vocational and Adult Education, Department of Education (Parts 400—499)

V Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599)

VI Office of Postsecondary Education, Department of Education (Parts 600—699)

VII Office of Educational Research and Improvmeent, Department of Education [Reserved]

XI National Institute for Literacy (Parts 1100—1199)

SUBTITLE C—REGULATIONS RELATING TO EDUCATION

XII National Council on Disability (Parts 1200—1299)

Title 35 [Reserved]

Chap.

Title 36—Parks, Forests, and Public Property

I National Park Service, Department of the Interior (Parts 1—199)
II Forest Service, Department of Agriculture (Parts 200—299)
III Corps of Engineers, Department of the Army (Parts 300—399)
IV American Battle Monuments Commission (Parts 400—499)
V Smithsonian Institution (Parts 500—599)
VI [Reserved]
VII Library of Congress (Parts 700—799)
VIII Advisory Council on Historic Preservation (Parts 800—899)
IX Pennsylvania Avenue Development Corporation (Parts 900—999)
X Presidio Trust (Parts 1000—1099)
XI Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)
XII National Archives and Records Administration (Parts 1200—1299)
XV Oklahoma City National Memorial Trust (Parts 1500—1599)
XVI Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation (Parts 1600—1699)

Title 37—Patents, Trademarks, and Copyrights

I United States Patent and Trademark Office, Department of Commerce (Parts 1—199)
II Copyright Office, Library of Congress (Parts 200—299)
III Copyright Royalty Board, Library of Congress (Parts 301—399)
IV Assistant Secretary for Technology Policy, Department of Commerce (Parts 400—499)
V Under Secretary for Technology, Department of Commerce (Parts 500—599)

Title 38—Pensions, Bonuses, and Veterans' Relief

I Department of Veterans Affairs (Parts 0—99)
II Armed Forces Retirement Home

Title 39—Postal Service

I United States Postal Service (Parts 1—999)
III Postal Regulatory Commission (Parts 3000—3099)

Title 40—Protection of Environment

I Environmental Protection Agency (Parts 1—1099)
IV Environmental Protection Agency and Department of Justice (Parts 1400—1499)
V Council on Environmental Quality (Parts 1500—1599)

Title 40—Protection of Environment—Continued

Chap.

VI Chemical Safety and Hazard Investigation Board (Parts 1600—1699)

VII Environmental Protection Agency and Department of Defense; Uniform National Discharge Standards for Vessels of the Armed Forces (Parts 1700—1799)

Title 41—Public Contracts and Property Management

SUBTITLE B—OTHER PROVISIONS RELATING TO PUBLIC CONTRACTS

50 Public Contracts, Department of Labor (Parts 50–1—50–999)

51 Committee for Purchase From People Who Are Blind or Severely Disabled (Parts 51–1—51–99)

60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60–1—60–999)

61 Office of the Assistant Secretary for Veterans' Employment and Training Service, Department of Labor (Parts 61–1—61–999)

62—100 [Reserved]

SUBTITLE C—FEDERAL PROPERTY MANAGEMENT REGULATIONS SYSTEM

101 Federal Property Management Regulations (Parts 101–1—101–99)

102 Federal Management Regulation (Parts 102–1—102–299)

103—104 [Reserved]

105 General Services Administration (Parts 105–1—105–999)

109 Department of Energy Property Management Regulations (Parts 109–1—109–99)

114 Department of the Interior (Parts 114–1—114–99)

115 Environmental Protection Agency (Parts 115–1—115–99)

128 Department of Justice (Parts 128–1—128–99)

129—200 [Reserved]

SUBTITLE D—OTHER PROVISIONS RELATING TO PROPERTY MANAGEMENT [RESERVED]

SUBTITLE E—FEDERAL INFORMATION RESOURCES MANAGEMENT REGULATIONS SYSTEM [RESERVED]

SUBTITLE F—FEDERAL TRAVEL REGULATION SYSTEM

300 General (Parts 300–1—300–99)

301 Temporary Duty (TDY) Travel Allowances (Parts 301–1—301–99)

302 Relocation Allowances (Parts 302–1—302–99)

303 Payment of Expenses Connected with the Death of Certain Employees (Part 303–1—303–99)

304 Payment of Travel Expenses from a Non-Federal Source (Parts 304–1—304–99)

Title 42—Public Health

I Public Health Service, Department of Health and Human Services (Parts 1—199)

IV Centers for Medicare & Medicaid Services, Department of Health and Human Services (Parts 400—499)

Title 42—Public Health—Continued

Chap.

V Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

Title 43—Public Lands: Interior

SUBTITLE A—OFFICE OF THE SECRETARY OF THE INTERIOR (PARTS 1—199)

SUBTITLE B—REGULATIONS RELATING TO PUBLIC LANDS

I Bureau of Reclamation, Department of the Interior (Parts 200—499)

II Bureau of Land Management, Department of the Interior (Parts 1000—9999)

III Utah Reclamation Mitigation and Conservation Commission (Parts 10000—10099)

Title 44—Emergency Management and Assistance

I Federal Emergency Management Agency, Department of Homeland Security (Parts 0—399)

IV Department of Commerce and Department of Transportation (Parts 400—499)

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH AND HUMAN SERVICES (PARTS 1—199)

SUBTITLE B—REGULATIONS RELATING TO PUBLIC WELFARE

II Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)

III Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services (Parts 300—399)

IV Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services (Parts 400—499)

V Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500—599)

VI National Science Foundation (Parts 600—699)

VII Commission on Civil Rights (Parts 700—799)

VIII Office of Personnel Management (Parts 800—899) [Reserved]

X Office of Community Services, Administration for Children and Families, Department of Health and Human Services (Parts 1000—1099)

XI National Foundation on the Arts and the Humanities (Parts 1100—1199)

XII Corporation for National and Community Service (Parts 1200—1299)

XIII Office of Human Development Services, Department of Health and Human Services (Parts 1300—1399)

Title 45—Public Welfare—Continued

Chap.	
XVI	Legal Services Corporation (Parts 1600—1699)
XVII	National Commission on Libraries and Information Science (Parts 1700—1799)
XVIII	Harry S. Truman Scholarship Foundation (Parts 1800—1899)
XXI	Commission on Fine Arts (Parts 2100—2199)
XXIII	Arctic Research Commission (Part 2301)
XXIV	James Madison Memorial Fellowship Foundation (Parts 2400—2499)
XXV	Corporation for National and Community Service (Parts 2500—2599)

Title 46—Shipping

I	Coast Guard, Department of Homeland Security (Parts 1—199)
II	Maritime Administration, Department of Transportation (Parts 200—399)
III	Coast Guard (Great Lakes Pilotage), Department of Homeland Security (Parts 400—499)
IV	Federal Maritime Commission (Parts 500—599)

Title 47—Telecommunication

I	Federal Communications Commission (Parts 0—199)
II	Office of Science and Technology Policy and National Security Council (Parts 200—299)
III	National Telecommunications and Information Administration, Department of Commerce (Parts 300—399)
IV	National Telecommunications and Information Administration, Department of Commerce, and National Highway Traffic Safety Administration, Department of Transportation (Parts 400—499)

Title 48—Federal Acquisition Regulations System

1	Federal Acquisition Regulation (Parts 1—99)
2	Defense Acquisition Regulations System, Department of Defense (Parts 200—299)
3	Health and Human Services (Parts 300—399)
4	Department of Agriculture (Parts 400—499)
5	General Services Administration (Parts 500—599)
6	Department of State (Parts 600—699)
7	Agency for International Development (Parts 700—799)
8	Department of Veterans Affairs (Parts 800—899)
9	Department of Energy (Parts 900—999)
10	Department of the Treasury (Parts 1000—1099)
12	Department of Transportation (Parts 1200—1299)
13	Department of Commerce (Parts 1300—1399)
14	Department of the Interior (Parts 1400—1499)

Title 48—Federal Acquisition Regulations System—Continued

Chap.

15 Environmental Protection Agency (Parts 1500—1599)

16 Office of Personnel Management, Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)

17 Office of Personnel Management (Parts 1700—1799)

18 National Aeronautics and Space Administration (Parts 1800—1899)

19 Broadcasting Board of Governors (Parts 1900—1999)

20 Nuclear Regulatory Commission (Parts 2000—2099)

21 Office of Personnel Management, Federal Employees Group Life Insurance Federal Acquisition Regulation (Parts 2100—2199)

23 Social Security Administration (Parts 2300—2399)

24 Department of Housing and Urban Development (Parts 2400—2499)

25 National Science Foundation (Parts 2500—2599)

28 Department of Justice (Parts 2800—2899)

29 Department of Labor (Parts 2900—2999)

30 Department of Homeland Security, Homeland Security Acquisition Regulation (HSAR) (Parts 3000—3099)

34 Department of Education Acquisition Regulation (Parts 3400—3499)

51 Department of the Army Acquisition Regulations (Parts 5100—5199)

52 Department of the Navy Acquisition Regulations (Parts 5200—5299)

53 Department of the Air Force Federal Acquisition Regulation Supplement [Reserved]

54 Defense Logistics Agency, Department of Defense (Parts 5400—5499)

57 African Development Foundation (Parts 5700—5799)

61 Civilian Board of Contract Appeals, General Services Administration (Parts 6100—6199)

63 Department of Transportation Board of Contract Appeals (Parts 6300—6399)

99 Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget (Parts 9900—9999)

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION (PARTS 1—99)

SUBTITLE B—OTHER REGULATIONS RELATING TO TRANSPORTATION

I Pipeline and Hazardous Materials Safety Administration, Department of Transportation (Parts 100—199)

II Federal Railroad Administration, Department of Transportation (Parts 200—299)

III Federal Motor Carrier Safety Administration, Department of Transportation (Parts 300—399)

IV Coast Guard, Department of Homeland Security (Parts 400—499)

Title 49—Transportation—Continued

Chap.

V National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

VI Federal Transit Administration, Department of Transportation (Parts 600—699)

VII National Railroad Passenger Corporation (AMTRAK) (Parts 700—799)

VIII National Transportation Safety Board (Parts 800—999)

X Surface Transportation Board, Department of Transportation (Parts 1000—1399)

XI Research and Innovative Technology Administration, Department of Transportation [Reserved]

XII Transportation Security Administration, Department of Homeland Security (Parts 1500—1699)

Title 50—Wildlife and Fisheries

I United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

II National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

III International Fishing and Related Activities (Parts 300—399)

IV Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400—499)

V Marine Mammal Commission (Parts 500—599)

VI Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)

CFR Index and Finding Aids

Subject/Agency Index

List of Agency Prepared Indexes

Parallel Tables of Statutory Authorities and Rules

List of CFR Titles, Chapters, Subchapters, and Parts

Alphabetical List of Agencies Appearing in the CFR

Alphabetical List of Agencies Appearing in the CFR

(Revised as of July 1, 2011)

Agency	CFR Title, Subtitle or Chapter
Administrative Committee of the Federal Register	1, I
Administrative Conference of the United States	1, III
Advanced Research Projects Agency	32, I
Advisory Council on Historic Preservation	36, VIII
African Development Foundation	22, XV
Federal Acquisition Regulation	48, 57
Agency for International Development	22, II
Federal Acquisition Regulation	48, 7
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Agriculture Department	2, IV; 5, LXXIII
Agricultural Marketing Service	7, I, IX, X, XI
Agricultural Research Service	7, V
Animal and Plant Health Inspection Service	7, III; 9, I
Chief Financial Officer, Office of	7, XXX
Commodity Credit Corporation	7, XIV
Economic Research Service	7, XXXVII
Energy Policy and New Uses, Office of	2, IX; 7, XXIX
Environmental Quality, Office of	7, XXXI
Farm Service Agency	7, VII, XVIII
Federal Acquisition Regulation	48, 4
Federal Crop Insurance Corporation	7, IV
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Forest Service	36, II
Grain Inspection, Packers and Stockyards Administration	7, VIII; 9, II
Information Resources Management, Office of	7, XXVII
Inspector General, Office of	7, XXVI
National Agricultural Library	7, XLI
National Agricultural Statistics Service	7, XXXVI
National Institute of Food and Agriculture.	7, XXXIV
Natural Resources Conservation Service	7, VI
Operations, Office of	7, XXVIII
Procurement and Property Management, Office of	7, XXXII
Rural Business-Cooperative Service	7, XVIII, XLII, L
Rural Development Administration	7, XLII
Rural Housing Service	7, XVIII, XXXV, L
Rural Telephone Bank	7, XVI
Rural Utilities Service	7, XVII, XVIII, XLII, L
Secretary of Agriculture, Office of	7, Subtitle A
Transportation, Office of	7, XXXIII
World Agricultural Outlook Board	7, XXXVIII
Air Force Department	32, VII
Federal Acquisition Regulation Supplement	48, 53
Air Transportation Stabilization Board	14, VI
Alcohol and Tobacco Tax and Trade Bureau	27, I
Alcohol, Tobacco, Firearms, and Explosives, Bureau of	27, II
AMTRAK	49, VII
American Battle Monuments Commission	36, IV
American Indians, Office of the Special Trustee	25, VII
Animal and Plant Health Inspection Service	7, III; 9, I
Appalachian Regional Commission	5, IX

Agency	CFR Title, Subtitle or Chapter
Architectural and Transportation Barriers Compliance Board	36, XI
Arctic Research Commission	45, XXIII
Armed Forces Retirement Home	5, XI
Army Department	32, V
Engineers, Corps of	33, II; 36, III
Federal Acquisition Regulation	48, 51
Bilingual Education and Minority Languages Affairs, Office of	34, V
Blind or Severely Disabled, Committee for Purchase From People Who Are	41, 51
Broadcasting Board of Governors	22, V
Federal Acquisition Regulation	48, 19
Bureau of Ocean Energy Management, Regulation, and Enforcement	30, II
Census Bureau	15, I
Centers for Medicare & Medicaid Services	42, IV
Central Intelligence Agency	32, XIX
Chief Financial Officer, Office of	7, XXX
Child Support Enforcement, Office of	45, III
Children and Families, Administration for	45, II, III, IV, X
Civil Rights, Commission on	5, LXVIII; 45, VII
Civil Rights, Office for	34, I
Court Services and Offender Supervision Agency for the District of Columbia	5, LXX
Coast Guard	33, I; 46, I; 49, IV
Coast Guard (Great Lakes Pilotage)	46, III
Commerce Department	44, IV; 50, VI
Census Bureau	15, I
Economic Affairs, Under Secretary	37, V
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Emergency Management and Assistance	44, IV
Federal Acquisition Regulation	48, 13
Foreign-Trade Zones Board	15, IV
Industry and Security, Bureau of	15, VII
International Trade Administration	15, III; 19, III
National Institute of Standards and Technology	15, II
National Marine Fisheries Service	50, II, IV
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Telecommunications and Information Administration	15, XXIII; 47, III, IV
National Weather Service	15, IX
Patent and Trademark Office, United States	37, I
Productivity, Technology and Innovation, Assistant Secretary for	37, IV
Secretary of Commerce, Office of	15, Subtitle A
Technology, Under Secretary for	37, V
Technology Administration	15, XI
Technology Policy, Assistant Secretary for	37, IV
Commercial Space Transportation	14, III
Commodity Credit Corporation	7, XIV
Commodity Futures Trading Commission	5, XLI; 17, I
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Community Services, Office of	45, X
Comptroller of the Currency	12, I
Construction Industry Collective Bargaining Commission	29, IX
Consumer Product Safety Commission	5, LXXI; 16, II
Copyright Office	37, II
Copyright Royalty Board	37, III
Corporation for National and Community Service	2, XXII; 45, XII, XXV
Cost Accounting Standards Board	48, 99
Council on Environmental Quality	40, V
Court Services and Offender Supervision Agency for the District of Columbia	28, VIII
Customs and Border Protection Bureau	19, I
Defense Contract Audit Agency	32, I
Defense Department	5, XXVI; 32, Subtitle A; 40, VII

Agency	CFR Title, Subtitle or Chapter
Advanced Research Projects Agency	32, I
Air Force Department	32, VII
Army Department	32, V; 33, II; 36, III, 48, 51
Defense Acquisition Regulations System	48, 2
Defense Intelligence Agency	32, I
Defense Logistics Agency	32, I, XII; 48, 54
Engineers, Corps of	33, II; 36, III
Human Resources Management and Labor Relations Systems	5, XCIX
National Imagery and Mapping Agency	32, I
Navy Department	32, VI; 48, 52
Secretary of Defense, Office of	2, XI; 32, I
Defense Contract Audit Agency	32, I
Defense Intelligence Agency	32, I
Defense Logistics Agency	32, XII; 48, 54
Defense Nuclear Facilities Safety Board	10, XVII
Delaware River Basin Commission	18, III
District of Columbia, Court Services and Offender Supervision Agency for the	28, VIII
Drug Enforcement Administration	21, II
East-West Foreign Trade Board	15, XIII
Economic Affairs, Under Secretary	37, V
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Economic Research Service	7, XXXVII
Education, Department of	5, LIII
Bilingual Education and Minority Languages Affairs, Office of	34, V
Civil Rights, Office for	34, I
Educational Research and Improvement, Office of	34, VII
Elementary and Secondary Education, Office of	34, II
Federal Acquisition Regulation	48, 34
Postsecondary Education, Office of	34, VI
Secretary of Education, Office of	34, Subtitle A
Special Education and Rehabilitative Services, Office of	34, III
Vocational and Adult Education, Office of	34, IV
Educational Research and Improvement, Office of	34, VII
Election Assistance Commission	2, LVIII; 11, II
Elementary and Secondary Education, Office of	34, II
Emergency Oil and Gas Guaranteed Loan Board	13, V
Emergency Steel Guarantee Loan Board	13, IV
Employee Benefits Security Administration	29, XXV
Employees' Compensation Appeals Board	20, IV
Employees Loyalty Board	5, V
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Endangered Species Committee	50, IV
Energy, Department of	5, XXIII; 10, II, III, X
Federal Acquisition Regulation	48, 9
Federal Energy Regulatory Commission	5, XXIV; 18, I
Property Management Regulations	41, 109
Energy, Office of	7, XXIX
Engineers, Corps of	33, II; 36, III
Engraving and Printing, Bureau of	31, VI
Environmental Protection Agency	2, XV; 5, LIV; 40, I, IV, VII
Federal Acquisition Regulation	48, 15
Property Management Regulations	41, 115
Environmental Quality, Office of	7, XXXI
Equal Employment Opportunity Commission	5, LXII; 29, XIV
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Administration, Office of	5, XV
Environmental Quality, Council on	40, V
Management and Budget, Office of	5, III, LXXVII; 14, VI; 48, 99

Agency	CFR Title, Subtitle or Chapter
National Drug Control Policy, Office of	21, III
National Security Council	32, XXI; 47, 2
Presidential Documents	3
Science and Technology Policy, Office of	32, XXIV; 47, II
Trade Representative, Office of the United States	15, XX
Export-Import Bank of the United States	2, XXXV; 5, LII; 12, IV
Family Assistance, Office of	45, II
Farm Credit Administration	5, XXXI; 12, VI
Farm Credit System Insurance Corporation	5, XXX; 12, XIV
Farm Service Agency	7, VII, XVIII
Federal Acquisition Regulation	48, 1
Federal Aviation Administration	14, I
Commercial Space Transportation	14, III
Federal Claims Collection Standards	31, IX
Federal Communications Commission	5, XXIX; 47, I
Federal Contract Compliance Programs, Office of	41, 60
Federal Crop Insurance Corporation	7, IV
Federal Deposit Insurance Corporation	5, XXII; 12, III
Federal Election Commission	11, I
Federal Emergency Management Agency	44, I
Federal Employees Group Life Insurance Federal Acquisition Regulation	48, 21
Federal Employees Health Benefits Acquisition Regulation	48, 16
Federal Energy Regulatory Commission	5, XXIV; 18, I
Federal Financial Institutions Examination Council	12, XI
Federal Financing Bank	12, VIII
Federal Highway Administration	23, I, II
Federal Home Loan Mortgage Corporation	1, IV
Federal Housing Enterprise Oversight Office	12, XVII
Federal Housing Finance Agency	5, LXXX; 12, XII
Federal Housing Finance Board	12, IX
Federal Labor Relations Authority	5, XIV, XLIX; 22, XIV
Federal Law Enforcement Training Center	31, VII
Federal Management Regulation	41, 102
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	5, LXXIV; 29, XXVII
Federal Motor Carrier Safety Administration	49, III
Federal Prison Industries, Inc.	28, III
Federal Procurement Policy Office	48, 99
Federal Property Management Regulations	41, 101
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I
Federal Register, Office of	1, II
Federal Reserve System	12, II
Board of Governors	5, LVIII
Federal Retirement Thrift Investment Board	5, VI, LXXVI
Federal Service Impasses Panel	5, XIV
Federal Trade Commission	5, XLVII; 16, I
Federal Transit Administration	49, VI
Federal Travel Regulation System	41, Subtitle F
Financial Crimes Enforcement Network	31, X
Fine Arts, Commission on	45, XXI
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I, IV
Food and Drug Administration	21, I
Food and Nutrition Service	7, II
Food Safety and Inspection Service	9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of the United States	45, V
Foreign Service Grievance Board	22, IX
Foreign Service Impasse Disputes Panel	22, XIV
Foreign Service Labor Relations Board	22, XIV
Foreign-Trade Zones Board	15, IV
Forest Service	36, II
General Services Administration	5, LVII; 41, 105

Agency	CFR Title, Subtitle or Chapter
Contract Appeals, Board of	48, 61
Federal Acquisition Regulation	48, 5
Federal Management Regulation	41, 102
Federal Property Management Regulations	41, 101
Federal Travel Regulation System	41, Subtitle F
General	41, 300
Payment From a Non-Federal Source for Travel Expenses	41, 304
Payment of Expenses Connected With the Death of Certain Employees	41, 303
Relocation Allowances	41, 302
Temporary Duty (TDY) Travel Allowances	41, 301
Geological Survey	30, IV
Government Accountability Office	4, I
Government Ethics, Office of	5, XVI
Government National Mortgage Association	24, III
Grain Inspection, Packers and Stockyards Administration	7, VIII; 9, II
Harry S. Truman Scholarship Foundation	45, XVIII
Health and Human Services, Department of	2, III; 5, XLV; 45, Subtitle A,
Centers for Medicare & Medicaid Services	42, IV
Child Support Enforcement, Office of	45, III
Children and Families, Administration for	45, II, III, IV, X
Community Services, Office of	45, X
Family Assistance, Office of	45, II
Federal Acquisition Regulation	48, 3
Food and Drug Administration	21, I
Human Development Services, Office of	45, XIII
Indian Health Service	25, V
Inspector General (Health Care), Office of	42, V
Public Health Service	42, I
Refugee Resettlement, Office of	45, IV
Homeland Security, Department of	2, XXX; 6, I
Coast Guard	33, I; 46, I; 49, IV
Coast Guard (Great Lakes Pilotage)	46, III
Customs and Border Protection Bureau	19, I
Federal Emergency Management Agency	44, I
Human Resources Management and Labor Relations Systems	5, XCVII
Immigration and Customs Enforcement Bureau	19, IV
Immigration and Naturalization	8, I
Transportation Security Administration	49, XII
HOPE for Homeowners Program, Board of Directors of	24, XXIV
Housing and Urban Development, Department of	2, XXIV; 5, LXV; 24, Subtitle B
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Acquisition Regulation	48, 24
Federal Housing Enterprise Oversight, Office of	12, XVII
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Housing, Office of, and Multifamily Housing Assistance Restructuring, Office of	24, IV
Inspector General, Office of	24, XII
Public and Indian Housing, Office of Assistant Secretary for	24, IX
Secretary, Office of	24, Subtitle A, VII
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II, VIII, X, XX
Housing, Office of, and Multifamily Housing Assistance Restructuring, Office of	24, IV
Human Development Services, Office of	45, XIII
Immigration and Customs Enforcement Bureau	19, IV
Immigration and Naturalization	8, I
Immigration Review, Executive Office for	8, V
Independent Counsel, Office of	28, VII
Indian Affairs, Bureau of	25, I, V

Agency	CFR Title, Subtitle or Chapter
Indian Affairs, Office of the Assistant Secretary	25, VI
Indian Arts and Crafts Board	25, II
Indian Health Service	25, V
Industry and Security, Bureau of	15, VII
Information Resources Management, Office of	7, XXVII
Information Security Oversight Office, National Archives and Records Administration	32, XX
Inspector General	
Agriculture Department	7, XXVI
Health and Human Services Department	42, V
Housing and Urban Development Department	24, XII
Institute of Peace, United States	22, XVII
Inter-American Foundation	5, LXIII; 22, X
Interior Department	
American Indians, Office of the Special Trustee	25, VII
MBureau of Ocean Energy Management, Regulation, and Enforcement	30, II
Endangered Species Committee	50, IV
Federal Acquisition Regulation	48, 14
Federal Property Management Regulations System	41, 114
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, IV
Indian Affairs, Bureau of	25, I, V
Indian Affairs, Office of the Assistant Secretary	25, VI
Indian Arts and Crafts Board	25, II
Land Management, Bureau of	43, II
National Indian Gaming Commission	25, III
National Park Service	36, I
Natural Resource Revenue, Office of	30, XII
Reclamation, Bureau of	43, I
Secretary of the Interior, Office of	2, XIV; 43, Subtitle A
Surface Mining Reclamation and Enforcement, Office of	30, VII
Internal Revenue Service	26, I
International Boundary and Water Commission, United States and Mexico, United States Section	22, XI
International Development, United States Agency for	22, II
Federal Acquisition Regulation	48, 7
International Development Cooperation Agency, United States	22, XII
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Trade Administration	15, III; 19, III
International Trade Commission, United States	19, II
Interstate Commerce Commission	5, XL
Investment Security, Office of	31, VIII
James Madison Memorial Fellowship Foundation	45, XXIV
Japan–United States Friendship Commission	22, XVI
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	2, XXVII; 5, XXVIII; 28, I, XI; 40, IV
Alcohol, Tobacco, Firearms, and Explosives, Bureau of	27, II
Drug Enforcement Administration	21, II
Federal Acquisition Regulation	48, 28
Federal Claims Collection Standards	31, IX
Federal Prison Industries, Inc.	28, III
Foreign Claims Settlement Commission of the United States	45, V
Immigration Review, Executive Office for	8, V
Offices of Independent Counsel	28, VI
Prisons, Bureau of	28, V
Property Management Regulations	41, 128
Labor Department	5, XLII
Employee Benefits Security Administration	29, XXV
Employees' Compensation Appeals Board	20, IV
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Federal Acquisition Regulation	48, 29

Agency	CFR Title, Subtitle or Chapter
Federal Contract Compliance Programs, Office of	41, 60
Federal Procurement Regulations System	41, 50
Labor-Management Standards, Office of	29, II, IV
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII
Office of Workers' Compensation Programs	20, VII
Public Contracts	41, 50
Secretary of Labor, Office of	29, Subtitle A
Veterans' Employment and Training Service, Office of the Assistant Secretary for	41, 61; 20, IX
Wage and Hour Division	29, V
Workers' Compensation Programs, Office of	20, I
Labor-Management Standards, Office of	29, II, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Office	37, II
Copyright Royalty Board	37, III
Local Television Loan Guarantee Board	7, XX
Management and Budget, Office of	5, III, LXXVII; 14, VI; 48, 99
Marine Mammal Commission	50, V
Maritime Administration	46, II
Merit Systems Protection Board	5, II, LXIV
Micronesian Status Negotiations, Office for	32, XXVII
Millenium Challenge Corporation	22, XIII
Mine Safety and Health Administration	30, I
Minority Business Development Agency	15, XIV
Miscellaneous Agencies	1, IV
Monetary Offices	31, I
Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation	36, XVI
Museum and Library Services, Institute of	2, XXXI
National Aeronautics and Space Administration	2, XVIII; 5, LIX; 14, V
Federal Acquisition Regulation	48, 18
National Agricultural Library	7, XLI
National Agricultural Statistics Service	7, XXXVI
National and Community Service, Corporation for	45, XII, XXV
National Archives and Records Administration	2, XXVI; 5, LXVI; 36, XII
Information Security Oversight Office	32, XX
National Capital Planning Commission	1, IV
National Commission for Employment Policy	1, IV
National Commission on Libraries and Information Science	45, XVII
National Council on Disability	34, XII
National Counterintelligence Center	32, XVIII
National Credit Union Administration	12, VII
National Crime Prevention and Privacy Compact Council	28, IX
National Drug Control Policy, Office of	21, III
National Endowment for the Arts	2, XXXII
National Endowment for the Humanities	2, XXXIII
National Foundation on the Arts and the Humanities	45, XI
National Highway Traffic Safety Administration	23, II, III; 47, VI; 49, V
National Imagery and Mapping Agency	32, I
National Indian Gaming Commission	25, III
National Institute for Literacy	34, XI
National Institute of Food and Agriculture.	7, XXXIV
National Institute of Standards and Technology	15, II
National Intelligence, Office of Director of	32, XVII
National Labor Relations Board	5, LXI; 29, I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, III, IV, VI
National Park Service	36, I
National Railroad Adjustment Board	29, III
National Railroad Passenger Corporation (AMTRAK)	49, VII
National Science Foundation	2, XXV; 5, XLIII; 45, VI

Agency	CFR Title, Subtitle or Chapter
Federal Acquisition Regulation	48, 25
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Telecommunications and Information Administration	15, XXIII; 47, III, IV
National Transportation Safety Board	49, VIII
Natural Resources Conservation Service	7, VI
Natural Resource Revenue, Office of	30, XII
Navajo and Hopi Indian Relocation, Office of	25, IV
Navy Department	32, VI
Federal Acquisition Regulation	48, 52
Neighborhood Reinvestment Corporation	24, XXV
Northeast Interstate Low-Level Radioactive Waste Commission	10, XVIII
Nuclear Regulatory Commission	2, XX; 5, XLVIII; 10, I
Federal Acquisition Regulation	48, 20
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Offices of Independent Counsel	28, VI
Office of Workers' Compensation Programs	20, VII
Oklahoma City National Memorial Trust	36, XV
Operations Office	7, XXVIII
Overseas Private Investment Corporation	5, XXXIII; 22, VII
Patent and Trademark Office, United States	37, I
Payment From a Non-Federal Source for Travel Expenses	41, 304
Payment of Expenses Connected With the Death of Certain Employees	41, 303
Peace Corps	22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension Benefit Guaranty Corporation	29, XL
Personnel Management, Office of	5, I, XXXV; 45, VIII
Human Resources Management and Labor Relations Systems, Department of Defense	5, XCIX
Human Resources Management and Labor Relations Systems, Department of Homeland Security	5, XCVII
Federal Acquisition Regulation	48, 17
Federal Employees Group Life Insurance Federal Acquisition Regulation	48, 21
Federal Employees Health Benefits Acquisition Regulation	48, 16
Pipeline and Hazardous Materials Safety Administration	49, I
Postal Regulatory Commission	5, XLVI; 39, III
Postal Service, United States	5, LX; 39, I
Postsecondary Education, Office of	34, VI
President's Commission on White House Fellowships	1, IV
Presidential Documents	3
Presidio Trust	36, X
Prisons, Bureau of	28, V
Procurement and Property Management, Office of	7, XXXII
Productivity, Technology and Innovation, Assistant Secretary	37, IV
Public Contracts, Department of Labor	41, 50
Public and Indian Housing, Office of Assistant Secretary for	24, IX
Public Health Service	42, I
Railroad Retirement Board	20, II
Reclamation, Bureau of	43, I
Recovery Accountability and Transparency Board	4, II
Refugee Resettlement, Office of	45, IV
Relocation Allowances	41, 302
Research and Innovative Technology Administration	49, XI
Rural Business-Cooperative Service	7, XVIII, XLII, L
Rural Development Administration	7, XLII
Rural Housing Service	7, XVIII, XXXV, L
Rural Telephone Bank	7, XVI
Rural Utilities Service	7, XVII, XVIII, XLII, L
Saint Lawrence Seaway Development Corporation	33, IV
Science and Technology Policy, Office of	32, XXIV

Agency	CFR Title, Subtitle or Chapter
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	5, XXXIV; 17, II
Selective Service System	32, XVI
Small Business Administration	2, XXVII; 13, I
Smithsonian Institution	36, V
Social Security Administration	2, XXIII; 20, III; 48, 23
Soldiers' and Airmen's Home, United States	5, XI
Special Counsel, Office of	5, VIII
Special Education and Rehabilitative Services, Office of	34, III
Special Inspector General for Iraq Reconstruction	5, LXXXVII
State Department	2, VI; 22, I; 28, XI
Federal Acquisition Regulation	48, 6
Surface Mining Reclamation and Enforcement, Office of	30, VII
Surface Transportation Board	49, X
Susquehanna River Basin Commission	18, VIII
Technology Administration	15, XI
Technology Policy, Assistant Secretary for	37, IV
Technology, Under Secretary for	37, V
Tennessee Valley Authority	5, LXIX; 18, XIII
Thrift Supervision Office, Department of the Treasury	12, V
Trade Representative, United States, Office of	15, XX
Transportation, Department of	2, XII; 5, L
Commercial Space Transportation	14, III
Contract Appeals, Board of	48, 63
Emergency Management and Assistance	44, IV
Federal Acquisition Regulation	48, 12
Federal Aviation Administration	14, I
Federal Highway Administration	23, I, II
Federal Motor Carrier Safety Administration	49, III
Federal Railroad Administration	49, II
Federal Transit Administration	49, VI
Maritime Administration	46, II
National Highway Traffic Safety Administration	23, II, III; 47, IV; 49, V
Pipeline and Hazardous Materials Safety Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
Secretary of Transportation, Office of	14, II; 49, Subtitle A
Surface Transportation Board	49, X
Transportation Statistics Bureau	49, XI
Transportation, Office of	7, XXXIII
Transportation Security Administration	49, XII
Transportation Statistics Bureau	49, XI
Travel Allowances, Temporary Duty (TDY)	41, 301
Treasury Department	5, XXI; 12, XV; 17, IV; 31, IX
Alcohol and Tobacco Tax and Trade Bureau	27, I
Community Development Financial Institutions Fund	12, XVIII
Comptroller of the Currency	12, I
Customs and Border Protection Bureau	19, I
Engraving and Printing, Bureau of	31, VI
Federal Acquisition Regulation	48, 10
Federal Claims Collection Standards	31, IX
Federal Law Enforcement Training Center	31, VII
Financial Crimes Enforcement Network	31, X
Fiscal Service	31, II
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
Investment Security, Office of	31, VIII
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A
Thrift Supervision, Office of	12, V
Truman, Harry S. Scholarship Foundation	45, XVIII
United States and Canada, International Joint Commission	22, IV
United States and Mexico, International Boundary and Water Commission, United States Section	22, XI

Agency	CFR Title, Subtitle or Chapter
Utah Reclamation Mitigation and Conservation Commission	43, III
Veterans Affairs Department	2, VIII; 38, I
Federal Acquisition Regulation	48, 8
Veterans' Employment and Training Service, Office of the Assistant Secretary for	41, 61; 20, IX
Vice President of the United States, Office of	32, XXVIII
Vocational and Adult Education, Office of	34, IV
Wage and Hour Division	29, V
Water Resources Council	18, VI
Workers' Compensation Programs, Office of	20, I
World Agricultural Outlook Board	7, XXXVIII

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations that were made by documents published in the FEDERAL REGISTER since January 1, 2001, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters and parts as well as sections for revisions.

For the period before January 1, 2001, see the "List of CFR Sections Affected, 1949–1963, 1964–1972, 1973–1985, and 1986–2000" published in 11 separate volumes.

2001

32 CFR

66 FR Page

Chapter VII

806b Appendix C amended 54930
989.1 (a) and (b) corrected 16868
989.3 (a)(4)(i), (iii), (c)(2)(iv), (d)(7) and (h)(7) corrected 16868
989.5 (d) corrected 16868
989.12 Corrected 16868
989.13 (c) corrected 16868
989.14 (g) through (j) corrected 16868
989.17 Corrected 16868
989.18 (a) corrected 16868, 26793
989.19 (a), (b) and (c)(2) corrected 16868
989.20 Corrected 16868
989.21 (a) and (b) corrected 16868
989.22 (a), (b) and (d) amended 16868
989.29 Corrected 16869
989.32 Corrected 16869
989.34 (a) and (b) corrected 16869
989.35 (c) corrected 16869
989.36 Corrected 16869
989.38 (b), (c) and (d) corrected 16869
989 Appendices A, B and C corrected 16869
Appendix C corrected 31177
Regulation at 66 FR 31177 eff. date corrected 31976

2002

32 CFR

67 FR Page

Chapter VII

806b Appendix C amended 17619, 53879
Appendix C corrected 64313
809a Revised 13718

32 CFR—Continued

67 FR Page

Chapter VII—Continued

861 Revised 65698

Chapter XII

935 Revised 16999
1293 Removed 69688

2003

32 CFR

68 FR Page

Chapter VII

806b Appendix C amended ... 24882, 37970, 68518

Chapter XX

2001 Revised 55168
2004 Removed 55186

2004

32 CFR

69 FR Page

Chapter VII

806b Revised 954
806b Appendix C amended 507
Appendix D amended 12540

Chapter XVI

1602.11 Revised 20543
1605.24 Introductory text, (a), (b) and (c) redesignated as (a) introductory text, (1), (2) and (3); new (b) added 20543
1609.1 Amended 20544
1656.1 (b)(6) removed; (b)(7) through (14) redesignated as new (b)(6) through (13) 20544

32 CFR—Continued

69 FR Page

Chapter XVI—Continued
1656.3 (a)(10) removed; (a)(11), (12) and (13) redesignated as new (a)(10), (11) and (12) 20544
1656.11 (b)(4) amended 20544
1656.13 (d), (f), (g) and (h) amended; (e) removed; (f), (g) and (h) redesignated as new (e), (f) and (g) 20544
1656.18 (c) amended 20544
1665.1 (a) amended 1525
1665.6 (c)(3) amended 1525
1665.7 (c) amended 1525

Chapter XIX
1910 Added 63064

Chapter XX
2001 Authority citation revised 17053
2001 Appendix A added 17053

2005

32 CFR

70 FR Page

Chapter VIII
806b Appendix D amended 46405

2006

32 CFR

71 FR Page

Chapter XX
2004 Added 18007

2007

32 CFR

72 FR Page

Chapter VII
841 Removed 35932
989.3 (a)(1), (2), (4)(ii), (c)(1), (2)(iv), (d)(7), (g)(3) and (4) correctly amended; (f) correctly revised 37106
989.4 (h) correctly amended 37106
989.5 (d) correctly amended 37106
989.13 (c) correctly amended 37106
989.14 (h), (i) and (j) correctly amended 37106
989.17 Correctly amended 37106
989.18 (a) correctly amended 37106
989.19 (a), (b) and (c)(2) correctly amended 37106
989.20 (a) correctly amended 37106
989.21 (a) and (c) correctly amended 37106

32 CFR—Continued

72 FR Page

Chapter VII—Continued
989.22 (b) and (d) correctly amended 37106
989.26 (f) correctly amended 37106
989.29 Correctly amended 37106
989.32 Correctly amended 37106
989.34 (a) and (b) correctly amended 37106
989.36 Correctly amended 37107
989.38 (b), (c) and (d) correctly amended 37107
989 Appendices A, B and C correctly amended 37107

Chapter XVII
Chapter XVII Established 45895
1700 Added 45895

Chapter XIX
1900.02 (h)(3) revised 39316

2008

32 CFR

73 FR Page

Chapter VII
903 Revised 9456

Chapter XVII
1701 Added 16532

2009

32 CFR

74 FR Page

Chapter VII
806b Appendix D amended ..... 55785—55788, 57415

Chapter XVII
1702 Added 11479
1703 Added 11480

2010

32 CFR

75 FR Page

Chapter VII
865.0—865.8 (Subpart A) Revised 59613

Chapter XVII
1701.24 Added 57163

Chapter XX
2001 Revised 37254
2003 Removed 37280
2004 Authority citation revised 17306
2004.5 Redesignated from 2004.24; (b) redesignated as (c); new (b), (d) and (e) added 17306

32 CFR—Continued

75 FR
Page

Chapter XX—Continued

2004.22 (c) added 17306
2004.24 Redesignated as 2004.5 17306

2011

(No regulations were published from January 1, 2011, through July 1, 2011)