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code of federal regulations

National Defense

32

PART 800 TO END

Revised as of July 1, 1998

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF JULY 1, 1998

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Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 32 CFR 806.0 *refers to title 32, part 806, section 0.*

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

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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

The appropriate revision date is printed on the cover of each volume.

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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.

July 1, 1998.

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, 1998.

The current regulations issued by the Department of Defense appear in the volumes containing parts 1–190 and parts 191–399; 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, Central Intelligence Agency, Information Security Oversight Office, National Security Council, Office of Science and Technology Policy, Office for Micronesian Status Negotiations, Office of the Vice President of the United States, and Presidential Commission on the Assignment of Women in the Armed Forces appear in the volume containing part 800 to end.

For this volume, Karen A. Thornton was Chief Editor. The Code of Federal Regulations is published under the direction of Frances D. McDonald, assisted by Alomha S. Morris.

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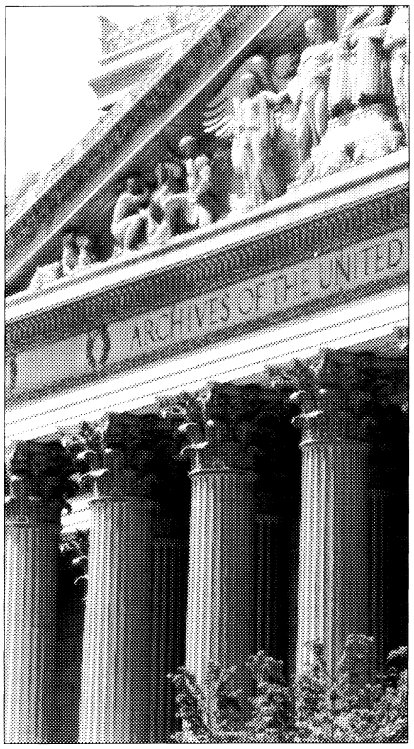

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Title 32–National Defense

(This book contains part 800 to End)

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AUTHORITY: 5 U.S.C. 552.

SOURCE: 59 FR 50835, Oct. 6, 1994, unless otherwise noted.

§ 806.0 Purpose.

This part implements Department of Defense (DoD) Directive 5400.7, 13 May 1988, DoD Freedom of Information Act Program; and DoD Regulation 5400.7–R, 3 October 1990, DoD Freedom of Information Act Program, 10 May 1991, with Change 1 (32 CFR Parts 285 and 286). It provides guidance for making records public and for the Air Force Freedom of Information Act (FOIA) Program. It tells how to process FOIA requests and tells the public how to request copies of Air Force records using the FOIA (Title 5, United States Code, Section 552, as amended). It outlines the requirements for For Official Use (FOUO) material. If this part conflicts with other Air Force publications, it takes precedence over those that deal with making records public.

§ 806.1 General guidance.

The Air Force discloses its records in its possession and control to the public, except those records exempt under the FOIA which, if released, would cause an identifiable harm. Make discretionary disclosures of exempt information whenever possible. (Discretionary releases are generally not appropriate for exemptions 1, 3, 4, 6, and 7(C)). A discretionary release to one requester will prevent withholding the same record if someone else requests it. Answer all requests for information and records promptly. Handle requests in a customer-friendly manner. Get misrouted FOIA requests to the FOIA Office immediately. Do not withhold a record simply because it might suggest administrative error or inefficiency or cause embarrassment. Do not deny a request just because the record is stored in a computer.

§ 806.2 Responsibilities.

(a) The Administrative Assistant to the Secretary of the Air Force (SAF/AA) takes overall responsibility for making sure the Air Force complies with the FOIA.

(b) The Office of the General Counsel to the Secretary of the Air Force (SAF/GSA) makes final decisions on appeals.

(c) The Director of Information management (SAF/AAI), through the Access Programs Office of the Administrative Communications and Records Management Division, SAF/AAIQ:

(1) Administers procedures described in this part.

(2) Submits required reports to the Office of the Assistant to the Secretary of Defense (Public Affairs).

(3) Provides guidance and instructions to major commands (MAJCOM) and field operating agencies (FOA).

(d) MAJCOM and FOA commanders implement this part in their commands and agencies.

(e) FOIA managers:

(1) Control and process FOIA requests.

(2) Obtain recommendations from the office of primary responsibility (OPR) for records.

(3) Provide a reading room for inspecting, copying and giving copies of records to requesters.

(4) Provide training.

(5) Review publications to make sure they comply with this part.

(6) Conduct periodic program reviews.

(7) Approve or deny fee waivers.

(8) Assess and collect fees.

(9) Send extension notices to requesters.

(10) Submit required reports.

(11) Make final determinations on ''no records'' responses.

(f) OPRs:

(1) Coordinate the release or denial with the offices of collateral responsibility (OCR) and with the Staff Judge Advocate (SJA) and FOIA office on proposed denials.

(2) Provide requested records.

(3) Help the disclosure authority determine whether to release record; and act as declassification authority when appropriate.

(g) Disclosure authorities determine whether to release records and provide them to the FOIA office.

(h) Initial denial authorities:

(1) Make final decisions to deny records.

(2) Tell requesters the nature of records or information denied, exemption supporting the denial with reason, and appeal procedures.

§ 806.3 Material not covered by the FOIA.

(a) Objects or articles, such as structures, furniture, vehicles, and equipment, whatever their historical value or value as evidence.

(b) Administrative tools for creating, storing, and retrieving records, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of DoD. 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 supported data that is processed and produced by such software an that in some instances may be stored with the software.

(c) Personal notes 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.

(d) Information stored in a computer for which there is no existing computer program for retrieval of the requested information.

(e) If other procedures for processing requests for material not covered by FOIA exist:

(1) Log the request and refer the request outside of the FOIA to the proper office.

(2) Acknowledge the requester's letter, tell the individual where you referred the request, and that the material is not a record under the FOIA.

(f) If no alternative release procedures exist, process the request under FOIA by advising the requester that materials are not agency records and give the requester appeal rights.

§ 806.4 FOIA requests.

(a) Under FOIA, members of the public, including foreign citizens, military and civilian personnel acting as private citizens, organizations and businesses, and individual members of the Congress, for themselves or constituents, may request records in writing. Federal agencies or fugitives from the law cannot make FOIA requests.

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

§ 806.5 Submitting FOIA requests.

Submit written requests that reasonably describe the desired records and include a statement on fees. Address

letters to the FOIA office of the activity that has the record. List other addressees to save time.

§806.6 Processing requests under FOIA and Privacy Act (PA).

Process requests under the Act that gives the most information. If the requester cites both Acts, address each in the reply.

§806.7 Describing records.

The requester is responsible for identifying the desired record. He or she should sufficiently describe the record to help locate it with a reasonable amount of effort. Generally a reasonable description contains enough information for an organized, nonrandom search. Offices must make reasonable efforts to find the records described. This means searching all activities and locations most likely to have the records, including staged or retired records. If the description is unclear, ask for more specific information. When possible, tell the requester what information would help.

§806.8 Creating a record.

(a) The Air Force is not required to create, compile, or obtain a record from outside the Air Force to fulfill a request. You may want to create a new record when it would be a more useful response to the requester or is less burdensome for the agency than providing an existing record and the requester agrees. Do not charge the requester more for creating a record than you would charge for the existing record.

(b) Apply a standard of reasonableness for electronic data when there is a question on whether you are creating, programming, or formatting a record. If you can respond with a ''business as usual'' approach, process the request, otherwise offer the requester appeal rights.

§806.9 Special disclosure procedures.

Some instructions have disclosure procedures for certain types of records. Refer to those instructions for specific disclosure procedures when you process FOIA requests. The only reason to deny a request is a FOIA exemption.

(a) Process FOIA requests from foreign citizens, foreign governments, their representatives, or international commands under this part, and coordinate with your foreign disclosure office. If the command has no foreign disclosure office, refer the request to SAF/AAIS (FOIA) for SAF/IAD coordination through the MAJCOM FOIA office.

(b) If requests from foreign government officials do not cite the FOIA, refer them to your foreign disclosure office and notify the requester.

(c) If you have a non-U.S. Government record, coordinate with the record's originator before releasing it (see §806.10(e)(1). This includes records created by foreign governments and organizations like the North Atlantic Treaty Organization (NATO) and North American Aerospace Defense (NORAD). Coordinate release of foreign government records with the U.S. Department of State through the MAJCOM FOIA office. Coordinate release or denial of Letters of Offer and Acceptance (LOA) and SAF/IA through SAF/AAIS (FOIA).

§806.10 FOIA exemptions.

Denial authorities may withhold records or information when an identifiable harm would result by disclosure, and the records are exempt under 5 U.S.C. 552(b).

(a) *Exemption 1—Classified Records.* Records properly and currently classified in the interest of national defense or foreign policy, as authorized by executive order and implementing instructions. Apply this exemption when disclosing information by itself or in the context of other information that could reasonably be expected to damage national security.

(1) To make a sound decision, review the record paragraph by paragraph for releasable information. Review all unclassified parts before release to see if they are exempt. 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.'' Review material, if appropriate, to determine if it should be classified, even though it was not classified when requested. AFI 31–401, Information Security Program Management (formerly AFRs 205–1 and 205–43), tells how to classify and declassify records. Check to see if information

from foreign sources is classified. Delete exempt parts of records and disclose the rest if it does not distort meaning and you can reasonably assume that a skillful, knowledgeable person could not reconstruct the information deleted. Denial letters must say that unauthorized disclosure of such information could reasonably be expected to cause damage to national security and cite the appropriate executive order paragraph(s) as authority for classification. When denying a whole classified record, release all unclassified parts that would cause no identifiable harm. Coordinate with the local information security specialist when invoking this exemption for consistency of classification policy and procedures.

(2) When simply knowing whether a record exists or not reveals classified information, use the ''Glomar'' (refusal to confirm or deny) response. Apply it consistently, not only when a record exists but also when a record does not exist. Otherwise, the pattern of using a ''no record'' response when a record does not exist, and a ''refusal to confirm or deny'' when a record does exist will disclose exempt information. Cite the FOIA exemption when you use the ''Glomar'' response.

(b) *Exemption 2—Internal Personnel Rules and Practices.* Exempt information falls in two categories:

(1) ''High'' 2 protects records which, if disclosed, would substantially hinder the effective performance of a significant function of the DoD by risking circumvention of a statute or Air Force instruction or policy.

(2) ''Low'' 2 is for trivial internal administrative matters of no genuine public interest and the process of releasing such records would constitute an unwarranted administrative burden. You can only use the ''low'' 2 exemption before fully processing the requested records. Otherwise, you may eliminate the administrative burden justification.

(c) *Exemption 3—Other Statutes.* Records of matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue of withholding or according to defined standards for withholding or referring to particular types of matters we must withhold. When using this exemption, cite both exemption 3 and the specific statute.

(d) *Exemption 4—Confidential Commercial Information.* Records with trade secrets and commercial or financial information submitted by a person or entity outside the Federal Government on a privileged or confidential basis that, if released, is likely to cause substantial competitive harm to the submitter of the information or impair the government's future ability to obtain necessary information. Examples of exempt information follow:

(1) Trade secrets that are commercially valuable plans, formulas, processes, or devices used for making, preparing, compounding, or processing trade commodities and are the product of innovation or substantial effort and were given in confidence.

(2) Commercial or financial information given in confidence, in connection with loans, bids, contracts, or proposals; or privileged information, such as trade secrets, inventions, discoveries, or other proprietary data.

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

(4) Personal statements made during inspections, investigations, or audits, if such statements are given in confidence by the individual and kept confidential, because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

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

(6) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with a research grant application or with a report during research.

(7) Computer software qualifying as a record under this part that is copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would adversely affect its market value.

(8) Technical or scientific data a contractor or subcontractor developed entirely with private funds and technical or scientific data developed with both Federal and private funds, which the contractor or subcontractor legally owns per 10 U.S.C. 2320–2321 and DoD Federal Acquisition Regulation Supplement (DFARS), chapter 2 of 48 CFR 227.4. You may withhold technical data developed entirely with Federal funds under Exemption 3 if the data meets the criteria of 10 U.S.C. 130.

(e) Before releasing information submitted from outside the Air Force:

(1) Write to the submitter of the data for views on releasability and include appendix b with your letter.

(2) Tell the requester that we must give the submitter of the data the opportunity to comment before the Air Force decides whether to release the information.

(3) Give the submitter a reasonable period of time (no more than 30 calendar days) to object to release and provide justification.

(4) If the submitter does not respond, write that you have not received a reply, tell the submitter of the decision to release with the reason and give the expected release date (at least 2 weeks from the date of your letter).

(5) If the submitter objects, but the Air Force disclosure authority considers the records releasable, tell the submitter before releasing the data. Include in the letter a brief explanation and a release date at least 2 weeks from the date of the letter.

(f) *Exemption 5—Inter- or Intra-Agency Records.* Intra-agency or inter-agency memoranda or letters that, according to recognized legal privileges are not routinely released to a party in litigation with the Air Force or DoD. If such a record or part of such a record would be made available routinely through the discovery process in the course of litigation with the agency, release it. In the discovery process, litigants get from each other information relevant to issues in a trial or hearing. if the information is only made available through the discovery process by special court order, then it is exempt. Release factual records or parts unless the information is privileged or otherwise exempt. Generally, release a direction or order from a superior to a subordinate, though contained in an internal communication, if it forms policy guidance or a decision, but is not a discussion of preliminary or other matters that would compromise decision making. Consult your SJA about whether Exemption 5 material would be routinely available through the discovery process. Here are examples of exempt information.

(1) The deliberative process privilege—those parts of records with internal advice, opinions, evaluations, or recommendations that reveal Air Force or DoD deliberations.

(2) Those nonfactual parts of Air Force personnel evaluations of contractors and their products.

(3) Advance information of a speculative, tentative, or evaluative nature on such matters as proposals to buy, lease, or otherwise acquire and dispose of materials, real estate, facilities, or functions, if such information gives private personal interests an unfair competitive advantage or impedes legitimate governmental functions. Generally, you cannot use this privilege to withhold factual information. However, you may withhold facts when they are so interconnected with deliberative information that disclosing facts necessarily discloses the Air Force's deliberative process or when facts and deliberative information are so interconnected that separating them would be uninformative or redundant.

(4) Official reports of inspection, audits, investigations, or surveys on safety, security, or internal management, administration, or operation of the Air Force.

(5) The attorney work product privilege—records an attorney prepares, or supervises the preparation of, in contemplating or preparing for administrative proceedings or litigation.

(6) The attorney-client privilege—confidential communication between an attorney and client. For example, 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.

(7) Unlike deliberative process privilege, you may withhold both facts and

opinions in attorney work product or privileged communications.

(8) Trade secrets or other confidential research, development, or commercial information the Air Force or DoD owns, whose premature release probably would affect the Air Force's or DoD's negotiating position or other commercial interests.

(9) Computer software qualifying as a record under this part which is deliberative in nature, if its release would inhibit decisionmaking. In this case, closely examine the use of the software to ensure its deliberative nature.

(10) Planning, programming, and budget information involving defense planning and resource allocation.

(g) *Exemption 6—Invasion of Personal Privacy*. Personnel, medical, and similar personal information in other files whose release to the public clearly invades personal privacy. To decide whether to release personal information, balance the privacy interest against what its release would tell the public about how the Air Force functions or about the conduct of an Air Force functions or about the conduct of any Air force employee (the public interest). Withhold records only when the privacy interest exceeds the public interest. Do not use this exemption to protect a deceased person's privacy, but you may use it to protect the privacy of the deceased person's family in rare instances. Generally let a person (or their representative) see their own personnel, medical, or similar files and withhold information from the subject only using 5 U.S.C. 552a, The Privacy Act of 1974 (see part 806b of this chapter).

(1) 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 U.S. territories on a routine basis. Units based in the United States for a long time, such as those in extensive training or maintenance activities, do not quality during that period. Units designated for deployment or contingency plans not yet executed and units that seldom leave the United States or U.S. territories (e.g., annually or semiannually) are not routinely deployable units. However, units alerted for deployment outside the United States or U.S. 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 any consider a unit deployed on a routine basis or deployed fully overseas when 30 percent of its personnel has 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 U.S. territories.

(2) Sensitive units are primarily involved in training for 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.

(3) Each MAJCOM and FOA will establish a system and OPR(s) to identify units in their command qualifying for this exemption. Appropriate OPRs could include Directors of Operations, Plans, and Programs, and Personnel. The resulting list of nonreleasable units will be reviewed and updated in January and July and provided to the MAJCOM or FOA FOIA office. This listing will be in ASCII format on a 3½ or 5¼ inch floppy disk (double sided, high density), which contains the unit's eight-position personnel accounting symbol (PAS) code, with 1 pas code per line (record) (8-byte record). The MAJCOM or FOA FOIA manager will forward an electronic copy of the list of nonreleasonable units to AFMPC/RMI to be included in the personnel data system. The MAJCOM and AFMPC FOIA offices will use it to determine releasable lists of names and duty addresses.

(h) *Exemption 7—Investigative Records*. Records or information gathered for law enforcement purposes but only when releasing these records would probably:

(1) Interfere with enforcement proceedings.

(2) Deprive a person of the right to a fair trial or an impartial judgment.

(3) Invade personal privacy unnecessarily.

(4) Identify a confidential source, including a state, local, or foreign agency or authority or any private institution that gives confidential information.

(5) Disclose information from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(6) Disclose methods for law enforcement investigation or prosecutions.

(7) Disclose guidelines for law enforcement investigations or prosecutions if the release would probably encourage circumvention of the law.

(8) Endanger an individual's life or physical safety.

(i) You may use this exemption to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes.

(j) *Exemption 8—Financial Institutions.* Those records contained in or related to examination, operation, or condition reports prepared by, on the behalf of, or for the use of, an agency that regulates or supervises financial institutions.

(k) *Exemption 9—Wells.* Records with geological and geophysical information and data, including maps, concerning wells.

§806.11 FOIA exclusions.

(a) Under two limited situations, requests for law enforcement records are not subject to disclosure under FOIA:

(1) Requests for law enforcement records when the investigation involves a possible criminal violation, the subject is unaware of the investigation, and disclosing the record's existence could interfere with enforcement.

(2) Requests for informant records a criminal law enforcement agency keeps under the informant's name or personal identifier made by a third party using the informant's name or personal identifier, but only when the informant's status as an informant has not been officially confirmed.

(b) In these cases, do not use denial procedures; instead, say you found no records. Coordinate with the SJA on these cases. When you write to the requester, do not give the statutory citation for the exclusion nor state your reliance on an exclusion.

§806.12 Denials.

Only denial authorities may withhold information. Denial authority level is at the deputy chiefs of staff and chiefs of comparable offices or higher at HQ USAF, and MAJCOM and FOA commanders. These officials may name an additional official as a denial authority. Send SAF/AAIQ a letter with the position titles only. Only the Administrative Assistant to the Secretary of the Air Force can approve a request for more than one additional denial authority. Send those requests, with justification, to SAF/AAIQ.

(a) When denying information, delete only the exempt parts of a record, release what remains, and let the requester know that you are providing all reasonably segregable, releasable parts of the record. Clearly show the requester where you deleted information.

(b) Denial letters must include the reason for the denial and cite the statutory exemption. Only authorized denial authorities sign denial letters. FOIA managers may sign ''no records'' responses. Denial letters and ''no records'' responses must also include an appeal paragraph that:

(1) Tells the requester to address appeals to the Secretary of the Air Force, through the FOIA office of the activity that issued the denial or ''no records'' response.

(2) Tells the requester to appeal within 60 calendar days from the date of the letter and to include reasons for reconsideration.

(3) Asks the requester to attach a copy of the response.

§806.13 Freedom of Information Act annual report.

(a) MAJCOM and FOA FOIA managers submit a calendar-year report on 3½- or 5¼-inch disk using the FOIA System. Send the report by 10 January to SAF/AAIQ. The report control symbol (RCS) is DD–PA(A)1365.

(b) SAF/AAIQ submits the report to the Office of the Assistant to the Secretary of Defense (Public Affairs) Directorate for Freedom of Information and Security Review on DD Form 2564, Annual Report—Freedom of Information Act.

§ 806.14 Host-tenant relationship.

(a) The host base FOIA manager logs, processes, and reports FOIA requests for tenant units. The host base FOIA office refers all recommended denials and ''no records'' appeals to the tenant MAJCOM FOIA manager.

(b) This host-tenant relationship does not apply to disclosure authorities for specialized records, such as the Air Force Audit Agency and the Air Force Office of Special Investigations.

§ 806.15 Processing FOIA requests.

All FOIA offices use the FOIA system to track and manage FOIA requests. AFM 4–196 is the FOIA System End Users Manual.

(a) After receiving a FOIA request, the FOIA manager:

(1) Records the date and time of receiving the request, logs the request in the FOIA system and sets a suspense date. For more than 10 FOIA requests, sets up a first-in, first-out system to process the requests in the order received.

(2) Considers a request received when the FOIA office responsible for processing the request receives it; and when the requester states a willingness to pay fees set for his or her category (see § 806.17), has paid past FOIA debts, and has reasonably described the requested records.

(3) Determines the fee according to the requester's category, writes to requesters who have not made arrangements to pay for the information and whose fees are more than $15, telling them the category and cost of the request.

(4) Answers fee waiver requests before processing. Asks for more justification, if needed to make a good decision. Do not consider this notice a denial.

(5) Attaches DD Form 2086, Record of Freedom of Information (FOI) Processing Cost, or DD 2086–1, Record of Freedom of Information (FOI) Processing Cost for Technical Data, to each request. The OPR must complete and return this form to the FOIA office. These forms give the fees for charging, if any, and processing costs you use to prepare the FOIA annual report.

(6) Writes the requester to acknowledge receipt of the request if the date or postmark (whichever is later) is more than 10 workdays ago and informs the requester of any unusual problems.

(7) Tells the requester if the record is not sufficiently described and asks for more information. If possible, offers to help the requester identify the requested records and tells what kind of information makes searching for a record easier.

(8) Sends the request to the OPR who searches for the record and decides whether to release it.

(9) Sends classified records with no OPR or functional equivalent to SAF/AAIS, through the MAJCOM or FOA FOIA office, for HQ USAF/SP review. Telephones SAF/AAIS before sending the records.

(10) Tells the requester in a letter sent within 10 workdays after receiving the request of the final decision to release or deny the records.

(11) When answering requests for lists of names and duty addresses, tells requesters as early as possible about the mass mailing restrictions outlined in AFI 37–125, Official Mail, Small Parcel and Distribution Management (formerly AFR 4–50).

(12) Grants 10 additional workdays for one or more of three reasons:

(i) All or part of the requested records are not at the installation processing the request.

(ii) Fulfilling the request means collecting and reviewing an enormous number of records.

(iii) Other Air Fore activities or other agencies need to be involved in deciding whether to release the records.

(13) Sends the requester a letter within 10 workdays, giving the reason for the delay and a date (within 20 workdays after receiving the request) when the requester can expect a final decision.

(14) Records extensions and reasons for them in the FOIA system.

(15) Coordinates with the public affairs office if the requested records are potentially newsworthy or if the news media sent the request.

(16) Sends releasable records to requesters with a bill (if appropriate).

(17) Sends a request the OPR wants to deny through the MAJCOM or FOA FOIA office to the denial authority for a decision. The package must include:

(i) The request.

(ii) A copy of the requested records.

(iii) The OPR's and SJA's written recommendations.

(iv) The exemption cited.

(v) The reason for denial.

(b) The OPR locates the information and recommends its release. In cases where several OPRs have functional responsibility for the information, the primary OPR is the one responsible for most of the information in the document. The OPR:

(1) Works with the offices of collateral responsibility (OCR) inside and outside the Air Force, considers the opinions and information they provide, and makes the final release decision.

(2) Forwards records that need coordination with other Air Force functional areas and outside agencies to the MAJCOM or FOA FOIA office, which sends them to the appropriate FOI office for review and return for final decision.

(3) Answers each functional request and follows FOIA denial procedures for records withheld.

§806.16 Referrals.

A FOIA manager refers requests to another FOIA office after consulting with them when the request asks for records or information originated by someone other than the activity receiving the request or when an OPR finds records in a search that belong to another activity.

(a) Refer FOIA requesters to sources that can provide unaltered publications and processed documents, such as maps, charts, regulations, and manuals to the public, with or without charge. For example, people can obtain documents published in the FEDERAL REGISTER without using the FOIA. The National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, sells current Air Force standard numbered (departmental) publications, but does not stock superseded, obsolete, rescinded, classified, FOUO, limited (L), or ''X'' distribution Air Force publications. FOIA requests for these publications go through normal FOIA channels to the OPR for a release recommendation.

(b) Usually, tell the requester about the referral, identify the record referred as security permits, and tell the requester to expect an answer from the agency or activity receiving the referral.

(c) If a request would involve many referrals, tell the requester where to address the request; don't refer it yourself.

(d) Before releasing records or information originated with the National Security Council (NSC) or the White House, refer them through the Office of the Assistant to the Secretary of Defense (Public Affairs) Directorate for Freedom of Information (OATSD[PA]DFOISR), Washington DC 20301. The OATSD(PA) will consult with them and reply back to you.

(e) The General Accounting Office (GAO) is outside the Executive Branch and not subject to the FOIA. However, if the FOIA manager receives a FOIA request directly from the public or referred from GAO for GAO documents that contain Air Force or DoD information, process the request under FOIA.

§806.17 Categorizing requesters.

(a) Requesters' fees depend on which group they belong to:

(1) *Category 1: Commercial.* Requesters pay all search, review, and duplication. To decide who belongs in this category find out how these requesters will use the requested documents. If you are unsure how the requester plans to use the records or the request itself does not clearly state plans, seek additional information before you categorize the request.

(2) *Category 2: Educational or Noncommercial Scientific Institution or News Media.* Requesters get the first 100 copies free and pay for additional copies. These requesters do not pay search or review charges. Requesters who use requested records to write and spread

news are not considered commercial requesters.

(3) *Category 3: Others.* Requesters get the first 2 hours of search and the first 100 copies free. These requesters do not pay review charges.

(b) Analyze each request to categorize the requester. If you think the requester's category differs from what the requester claims, ask the individual for more justification and say you cannot begin searching for records until you have agreed on the category. If the requester does not send the FOIA manager more justification in reasonable time (normally, 30 calendar days), the manager makes a final decision and notifies the requester of the decision and of the right to appeal it.

(c) Tell requesters that you cannot begin to answer their requests until they state they will pay the costs set for their category.

§ 806.18 Fee assessment.

The FOIA limits charges to search, review, and duplication based on the requester's category.

(a) Estimate fees if the requester asks. Do not charge an amount more than the estimate or the amount the requester agrees to unless the requester first agrees to pay more.

(b) Search time includes all time spent looking for records to respond to a request. Personnel must search efficiently to minimize both the Air Force's and the requester's costs. Search efforts must be thorough and include all locations and activities most likely to have the requested records. Searches may include retired or staged records. Time spent reviewing documents to decide whether statutory exemptions apply counts as review time, not search time. For computer searches, determine the first 2 free hours against the salary scale of the person operating the computer.

(1) FOIA managers may charge for search time for the appropriate category (and review time for commercial requesters only), if the requester agreed in advance to pay, even if:

(i) A search does not uncover the requested records.

(ii) The records found are entirely exempt from disclosure.

(2) When estimated search charges exceed $25, tell the requester the estimated fees, unless the requester has already indicated a willingness to pay fees as high as the estimate. When feasible, offer the requester the opportunity to restate the request so that the search costs less.

(c) Review is the process of examining documents to determine if one or more of the statutory exemptions allows withholding. It also includes the time it takes to excise information. Review does not include time spent resolving general legal or policy issues on exemptions. FOIA managers may only assess commercial requesters for initial review. This does not include reviews at the appeal stage for exemptions already applied, but it may include review to apply an exemption not previously cited.

(d) Requesters pay only for copies of the records they actually receive. Copies may be on paper, microfiche, audiovisual, or machine-readable magnetic tape or disk, among other media. FOIA managers must try hard to ensure copies are clear. If you cannot possibly provide a clear copy, tell the requester that the copy is the best available and that he or she can make an appointment to review the master copy. For copies of computer tapes and audiovisual material, charge the actual copying cost, including the operator's time.

(e) Before beginning or continuing work on a request, FOIA managers may require advance payment from requesters:

(1) Who have not paid fees on time (usually within 30 calendar days) in the past.

(2) Whose estimated fees are over $250, unless the requester always pays promptly. In that case, give the requester an estimate and ask the requester to ensure full payment.

(f) If the requester has always paid promptly, the FOIA manager sends the records and requests payment at the same time.

(g) If a requester has not paid on time in the past, FOIA managers may ask the requester to:

(1) Pay (or show proof of payment of) outstanding bills, plus interest, for past FOIA requests. Consult 31 U.S.C.

3717 for interest rates and coordinate with your accounting and finance office.

(2) Pay estimated fees in advance.

(h) If a requester has no payment history, or has not paid on time in the past, FOIA managers may ask the requester to pay after processing the request but before sending the records.

(i) When employees with different hourly rates search for information for an ''Other'' (Category 3) requester, waive the cost of the most expensive 2 hours of search. Requesters receive the first 2 hours search (Category 3 requesters only) and the first 100 pages of duplication (Categories 2 and 3) free only once per request. If you complete your work and refer the request to another FOI office for action, tell that FOI office how much time you spent searching and how many pages you copied for the requester.

§806.19 Aggregating requests.

A requester may make many requests at once, each seeking parts of a document or documents, just to avoid paying fees. When a requester or a group of requesters breaks a request into many requests to avoid paying, the FOIA manager may combine the requests and charge accordingly. Before combining requests, be sure you have solid evidence that the requesters are trying to avoid fees. Do not combine one requester's multiple requests on unrelated subjects. Contact SAF/AAIQ before taking action.

§806.20 Fee waivers.

(a) Waive fees for requesters of all categories when:

(1) FOIA costs total $15 or less.

(2) A record is created voluntarily to save the cost of supplying many records.

(3) A record previously withheld is released at small cost (e.g., $15 to $30).

(4) Releasing the information is likely to contribute significantly to public understanding of the operations or activities of the DoD and is not primarily in the commercial interest of the requester.

(b) A waiver in the public interest establishes the two basic requirements below. Both must be met before you waive or reduce fees. Use the following six factors. Begin with the first four factors to determine ''public interest'' and then use the two remaining factors to decide if release ''is not primarily in the commercial interest of the requester.''

(1) *Requirement 1.* Is releasing the information in the public interest business it will probably contribute significantly to public understanding of the government's operations or activities?

(i) *Factor 1—Subject of the Request.* Analyze whether the subject matter will significantly contribute to the public understanding of DoD operations or activities. Requests made for records in DoD's possession originated by nongovernment organizations for their intrinsic content rather than informative value will likely not contribute to public understanding of DoD operations or activities. Press clippings, magazine articles, or records expressing an opinion or concern from a member of the public regarding a DoD activity are such records. Releasing older records may be relevant to current DoD activities, so do not discount it under this factor simply because it is old. For example, a requester might want historical records to study how a certain current DoD policy evolved. Review these requests closely, comparing the requester's stated purpose for the records and the potential for public understanding of DoD operations and activities.

(ii) *Factor 2—Informative Value.* Closely analyze a record's substantive contents to determine whether disclosure is meaningful, and will inform the public on DoD operations or activities. While the subject of a request may contain information concerning DoD operations or activities it may not always help people understand these operations or activities. One example is a heavily edited record, containing only random words, fragmented sentences, or paragraph headings. Another example is information already in the public domain.

(iii) *Factor 3—General Public Will Understand the Subject Better.* Will the records' release inform, or have the potential to inform, the public or just the requester or a few interested persons? Knowing the requester's identity is essential to determine whether he or she

plans to, and knows how to, communicate information to the public. Plans to write a book, research a subject, work on a doctoral dissertation, or indigency are not reason enough to waive fees. The requester must tell how he or she plans to disclose the information to the general public. You may ask requesters for their qualifications, the nature of their research, the purpose of requesting information, and their plans for making information public.

(iv) *Factor 4—Significance of Public Understanding.* Balance the relative significance or impact of the disclosure against the level of public knowledge or understanding that exists before disclosure. Records released on a subject of wide public interest should contain previously unknown facts that increase public knowledge. They should not duplicate what the general public already knows. Determining the significance of information requires objective judgment. Take care to determine whether disclosure will probably lead to significant public understanding of the issue. Do not judge whether the information is important enough to be public.

(2) *Requirement 2.* Does disclosure of the information primarily mean profit for the requester?

(i) *Factor 5—Commercial Interest.* If you determine the requester will use the records to make a profit, then decide if it's primary, as opposed to a personal or noncommercial interest. In addition to profit-making organizations, individuals, and other organizations may have a commercial interest in certain records. When you have difficulty deciding whether a request is commercial in nature, the requester's identity and the circumstances of the request may help. You may write to the requester and ask for more details.

(ii) *Factor 6—Primary Interest.* After you have determined the requester's commercial interest, decide if it is primary. Commercial interests are primary only if the requester's profit clearly overrides a personal or nonprofit interest. You must decide whether the commercial interest outweighs any benefit to the public as a result of disclosure. Waive or reduce fees when the public gains more than the requester. If the requester's commercial interest is greater than the public interest, do not waive or reduce fees even if public interest is significant. As business organizations, news organizations have a commercial interest; however, you can assume that their primary interest is giving the general public news. Scholars writing books or engaging in other academic research, may profit, either directly or indirectly (through the institution they represent); however, such work is primarily done for educational purposes. Usually you would not assess scholars fees. Assume that brokers or others who compile government information for marketing use the information for profit.

(iii) *Decide each fee waiver case by case.* When you have doubts about waiving or charging a fee, favor the requester.

§ 806.21 Transferring fees to accounting and finance offices.

The Treasurer of the United States has two accounts for FOIA receipts. Use account 3210, Sales of Publications and Reproductions, Freedom of Information Act, for depositing fees for publications and forms described in Federal Account Symbols and titles. Use receipt account 3210, Fees and Other Charges for Services, Freedom of Information Act, to deposit fees for searching for, copying, and reviewing records to provide information not in existing publications or forms. Add your disbursing office's prefix to the account numbers. Deposit all FOIA receipts in these accounts except those from industrially funded and nonappropriated funded activities. Deposit these receipts in the applicable fund.

§ 806.22 Fee rates.

(a) These fees apply only to FOIA requests. Part 813 of this chapter, Schedule of Fees for Copying, Certifying and Searching Records and Other Documentary Material, contains the fee schedule for non-FOIA services. Refer to Part 806B of this chapter for guidance on fees for PA requests.

(b) Search and review:

(1) Clerical (E9 and GS–8 and below)—$12 an hour.

(2) Professional (01–06 and GS–9–GS/GM–15)—$25 an hour.

(3) Executive (07 and GS–16/ES1 and above)—$45 an hour.

(c) Computer search fees are based on direct costs of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. Also include the salary scale (equal to hourly rates above) for the computer operator or programmer who planned and carried out the search.

(d) Duplication:

(1) Preprinted material—$.02 per page.

(2) Office copies—$.15 per page.

(3) Microfiche—$.25 per page.

(4) Computer copies (tapes or printouts)—actual cost of duplicating the tape or printout, including operator's time and tape cost.

(e) Copying cost for audiovisual documents is the actual cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials given to a requester need not be reproducible.

(f) Special Services. Includes certifying that records are true copies and sending records by express mail. You may recover their costs if the requester clearly asks for and agrees to pay for them.

§806.23 Technical data.

Technical data does not include computer software or data used for contract administration, such as financial and management information. If the FOIA requires, release technical data (not including critical technology with military or space application) after the requester pays all reasonable costs for search, duplication, and review.

§806.24 Technical data fee rates.

(a) Clerical search and review—$13.25 an hour. Minimum charge—$8.30. Professionals and executives—set rate before beginning at actual hourly rate. Minimum charge is ½ of hourly rate.

(b) Copying rates depend on the type of record. If this list does include the product, use the fair market value.

(1) Aerial photographs, specifications, permits, charts, blueprints, and other technical documents—$2.50 each.

(2) Microfilmed engineering data aperture cards (silver duplicate negatives)—$.75 per card.

(3) Silver duplicate negatives, keypunched and verified—$.85 per card.

(4) Diazo duplicate negatives—$.65 per card.

(5) Diazo duplicate negatives keypunched and verified—$.75 per card.

(6) Engineering data on 35mm roll film—$.50 per frame.

(7) Engineering data 16mm roll film—$.45 per frame.

(8) Engineering paper prints and drawings—$1.50 each.

(9) Reprints of microfilm indices—$.10 each.

(10) Office copies—$3.50 for up to six images. Each additional image—$.10.

(11) Typewritten pages—$3.50 each.

(12) Certification and validation with seal—$5.20.

(13) Hand-drawn plots and sketches—$12 an hour or less.

(14) Fee Waivers for Technical Data. Waive the fees if they are more than regular FOIA fee rates if a citizen or a US corporation asks and certifies the need for technical data to submit (or assess its ability to submit) an offer to supply the United States or its contractor with a product related to the technical data. You may ask the citizen or corporation for a deposit of not more than what fulfilling the request costs. When the citizen or coporation submits the offer, refund the deposit. Also waive charges:

(15) If a requester needs technical data to meet the terms of an international agreement.

(16) If you decide, using regular FOIA fee waiver guidance, that a waiver is in the interest of the United States.

§806.25 Appeals.

Requesters may appeal denials of records, category determinations, fee waiver requests, and ''no records'' determinations by writing to the Office of the Secretary of the Air Force, within 60 calendar days after the date of the denial letter. A requester who sends the appeal after 60 calendar days, should explain the reason for the delay.

(a) Requesters who appeal have exhausted all administrative remedies within the Department of the Air Force and The Office of the General Counsel to the Secretary of the Air Force (SAF/GC) makes a final decision. Requesters must address all appeals to

the Office of the Secretary of the Air Force, through the MAJCOM or FOA FOIA office that denied the request. Requesters should attach a copy of the denial letter to their appeal and give their reasons for appealing.

(b) After coordinating with the local SJA (and the OPR, if appropriate), MAJCOM and FOA FOIA offices send all appeals, including late submissions, to Air Force Legal Services Agency (AFLSA/JACL) for determination, unless they have reconsidered and approved the request. MAJCOM and FOA FOIA offices give appeals priority. They do not have 20 workdays to process an appeal.

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

(d) When sending appeals to AFLSA/JACL, attach:

(1) The original appeal letter and envelope.

(2) The initial request and any attachments.

(3) The denial letter, with an index of the denied material, if applicable.

(4) Copies of all records you have already provided; or if the records are massive (Several cubic feet) and AFLSA/JACL agrees, an index or description of released records.

(5) Copies of all administrative processing documents, including extension letters and opinions and recommendations about the request.

(6) Copy of the denied record or denied portions of it marked to show what you withheld. If the records are massive and AFLSA/JACL agrees, you may substitute a detailed description of the documents.

(7) A point-by-point discussion of factual and legal arguments the requester's appeal contains and, proof that the denial authority considered and rejected these arguments and why.

(8) An explanation of the decision-making process for intraagency documents denied under the deliberative process privilege and how the denied material fits into that process.

(e) Assemble appeal packages:

(1) Arrange attachments in the order listed in paragraph (d) of this section. Use tabbed dividers to separate attachments.

(2) List all attachments in your cover letter.

(3) Include the name of the person to contact and a phone number.

(f) AFLSA/JACL sends the appeal of the Office of the General Counsel, who makes a final determination. The law requires a final decision within 20 workdays after receipt of the appeal letter. The 20 days begins when the denial authority's FOIA office receives the appeal. The time limit includes processing actions by all levels. If a final determination cannot be made within 20 days, AFLSA/JACL writes to the requester to acknowledge the appeals' receipt and to explain the delay. If SAF/GC upholds the denial, in whole or in part, SAF/GC tells the requester, explains reasons for the denial, and tells the requester about judicial review rights. If SAF/GC grants the appeal, that office tells the requester in writing and releases, or directs the release of, the record.

(g) For ''no records'' determinations, search again, if warranted, or verify the first search. Include in the package you send to AFLSAS/JACL any letters that show you systematically tried to find records. Tell, for example, what areas or offices you search for how you conducted the search—manually, by computer, by telephone, etc.

(h) For appeals to denials of fee waiver requests, fully account for actual and estimated costs with a copy of the DD 2086 or DD Form 2086–1.

§ 806.26 For Official Use Only (FOUO).

FOUO is not a classification. Information marked FOUO must meet the criteria for exemptions 2 through 9, or you cannot withhold it. Do not consider or mark any other records FOUO.

(a) Originators mark records when they create them to call attention to FOUO content. An FOUO marking does not mean you must withhold a record under the FOIA. You still need to review a requested record. Examine records with and without markings to identify information that needs protection and is exempt from public release

or to decide whether discretionary release is appropriate.

(1) Information in a technical document that requires a distribution statement per AFI 61–204, Controlling the Distribution of Classified and Unclassified Scientific and Technical Information (formerly AFR 80–30), must show that statement. The originator may also mark the information FOUO, if appropriate.

(2) Mark an unclassified document containing FOUO information ''For Official Use Only'' at the bottom, on the outside of the front cover (if any), on each page containing FOUO information, on the back page, and on the outside of the back cover (if any).

(3) In unclassified documents, the originator may also mark individual paragraphs that contain FOUO information to alert users and assist in review.

(4) In a classified document, mark:

(i) An individual paragraph that contains FOUO, but not classified information, by placing ''(FOUO)'' at the beginning of the paragraph.

(ii) The top and bottom of each page that has both FOUO and classified information, with the highest security classification of information on that page.

(iii) ''FOUO'' at the bottom of each page that has FOUO but not classified information.

(5) If a classified document also contains FOUO information or if the classified material becomes FOUO when declassified, place the following statement on the bottom of the cover or the first page, under the classification marking: If declassified, review the document to make sure material is not FOUO and not exempt under this part before public release.

(6) Mark other records, such as computer printouts, photographs, films, tapes, or slides,''For Official Use Only'' or ''FOUO'' so the receiver or viewer knows the record contains FOUO information.

(7) Mark FOUO material sent to authorized persons outside the DoD with an explanation typed or stamped on the document:

This document contains information EXEMPT FROM MANDATORY DISCLOSURE UNDER THE FOIA. Exemption(s) . . . . . applies (apply). (Further distribution is prohibited without the approval of (enter OPR)).

(b) DoD components, officials of DoD components, and authorized DoD contractors, consultants, and grantees send FOUO information to each other to conduct official DoD business. Tell recipients the status of such information, and send the material in a way that prevents unauthorized public disclosure. Make sure documents that transmit FOUO material call attention to any FOUO attachments. Normally, you may send FOUO records over facsimile equipment. To prevent unauthorized disclosure, consider attaching special cover sheets (i.e., AF Form 3227, Privacy Act Cover Sheet, for Privacy Act information), the location of sending and receiving machines, and whether authorized personnel are around to receive FOUO information. FOUO information may be passed to officials in other departments and agencies of the executive and judicial branches to fulfill a government function. Mark the records ''For Official Use Only,'' and tell the recipient the information is exempt from public disclosure under the FOIA and whether it needs special handling. If the records are subject to the PA, refer to Part 806b of this chapter for PA disclosure policies.

(c) AFI 90–401, Air Force Relations With Congress (formerly AFR 11–7), governs the release of FOUO information to members of the Congress and AFI 65–401, Air Force Relations With the General Accounting Office (formerly AFR 11–8), governs its release to the General Accounting Office (GAO). Review records before releasing to see if the information warrants FOUO status. If not, remove FOUO markings. If the material still warrants FOUO status, mark the records FOUO and explain the appropriate exemption and marking to the recipient.

(d) When you use the US Postal Service, package records with FOUO information so their contents are safe. If FOUO information is not combined with classified information, individuals may send FOUO information by First Class Mail or Parcel Post. Bulky shipments, such as FOUO directives or testing materials, that qualify under postal regulations may be sent by Fourth Class Mail.

(e) Mark each part of a message that contains FOUO information. Unclassified messages containing FOUO information must show the abbreviation ''FOUO'' before the text begins.

(f) To safeguard FOUO records during normal duty hours, place them in an out-of-sight location if people who do not work for the government come into the work area. After normal duty hours, store FOUO records to prevent unauthorized access. File them with other unclassified records in unlocked files or desks, etc., if the Government or a Government contractor provides normal internal building security. When there is no internal security, locked buildings or rooms usually provide adequate after-hours protection. For additional protection, store FOUO material in locked containers such as file cabinets, desks, or bookcases.

(g) When a record is no longer FOUO, remove the markings or indicate on the document the markings no longer apply. Try to tell everyone who has the records that their status has changed.

(h) Destroy FOUO materials by tearing them up so no one can put them back together and throwing them into trash containers. When the information needs more protection, local authorities may use other methods. However, balance the expense of extra protection against the degree of sensitivity of the FOUO information in the records. You may recycle FOUO material. Safeguard the FOUO documents or information until recycling to prevent unauthorized disclosure. Recycling contracts must include agreements on how to protect and destroy FOUO and PA materials.

(i) Unauthorized disclosure of FOUO records is not an unauthorized disclosure of classified information. Air Force personnel must act to protect FOUO records under their control from unauthorized disclosure. When unauthorized persons gain access to these records, administrators find out who is responsible and take disciplinary action where appropriate. Unauthorized disclosure of FOUO information containing PA information may also result in civil or criminal sanctions against individuals or the Air Force. Tell the originating organization when its records are improperly disclosed.

APPENDIX A TO PART 806—GLOSSARY OF TERMS

Appellate Authority—The Office of the General Counsel to the Secretary of the Air Force, who decides FOIA appeals.

Commercial Request—A category 1 request from, or on behalf of, one who seeks information that furthers the commercial, trade, or profit interest of the requester or the person represented.

Denial—A determination by a denial authority not to disclose requested records in its possession and control.

Determination—The decision to grant or deny all or part of a request from the public for records.

Disclosure—Providing access to, or one copy of, a record.

Disclosure Authority—Official authorized to release records.

Education Institution Request—A category 2 request from 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 one or more scholarly research programs.

Electronic Data—Records or information created, stored, and retrieved by electronic means. Electronic records do not include computer software used as a tool to create, store, or retrieve electronic data.

FOIA Manager—The person who manages the FOIA Program at each organizational level.

FOIA Request—A written request for records from the public that cites or implies the FOIA.

Functional Request—A request for records that does not specifically cite or imply the FOIA.

Glomar Response—A reply that neither confirms nor denies the existence or nonexistence of the requested record. A ''Glomar'' response may be used with FOIA exemptions 1, 6, and 7(C).

Initial Denial Authority (IDA)—Persons in authority positions who may withhold records under the FOIA.

News Media Request—A category 2 request from a person whose job is gathering news for a publishing or broadcasting organization that supplies news to the public. News media also includes free lance journalists who can prove they have good reason for expecting a news organization to publish their work.

Noncommercial Scientific Institution Request—A category 2 request from a noncommercial institution that operates solely to conduct scientific research not intended to promote a particular product or industry.

Other Request—A category 3 request from anyone who does not fit into the Commercial category or the Noncommercial Scientific or

Educational Institutions or News Media category.

Partial Denial—Decision to withhold part of a requested agency record.

Public Interest—When releasing official information sheds light on how an agency performs its statutory duties and informs citizens about what their government is doing or reveals an Air Force official's conduct. Normally there is no public interest in personal information if it does not reveal a person's conduct in their job.

Records—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 U.S. Government in connection with the transaction of public business and in the agency's possession and control at the time it receives the request. Records such as notes, working papers, and drafts kept as historical evidence of actions are subject to the FOIA, and may be exempt from release under 5 U.S.C. 552(b)(5) if an identifiable harm exists by their release. Computer software rarely qualifies as an agency record. Evaluate each case. Two examples of software as a record are:

a. Data embedded in the software cannot be extracted without the software.

b. Software that reveals information about DoD organization, policies, functions, decisions, or procedures, such as computer models used to forecast budget outlays, to calculate retirement system costs, or to optimize models on travel costs.

Search—To look for a requested record or a specific section of a record. You can search over the telephone, manually, or with computer searches.

Statutory Time Limits—The 10 workdays after receiving the request to tell the requester whether the records are released or denied. This term also covers the additional 10-workday extension allowed for reasons in §806.15(a)(12). The 10 days begin when the FOIA manager receives a properly filed request with a reasonable description of the requested records and with the requester's stated willingness to pay fees or fees paid. If the requester disagrees with his or her category or wants fees reduced or waived, the 10 days begin after resolving these issues.

Technical Data—Information (including computer software documentation) that is scientific or technical in nature and recorded on any medium.

APPENDIX B TO PART 806—REQUIREMENTS OF 5 U.S.C. 552(B)(4) (SEND WITH LETTER TO SUBMITTERS)

(a) The Freedom of Information Act (FOIA) requires Federal agencies to provide their records, except those specifically exempted, for the public to inspect and copy.

(b) Section (b) of the Act lists nine exemptions that are the only basis for withholding records from the public.

(c) 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 may withhold trade secrets and commercial or financial information they obtained from a person or organization outside the government which is privileged or confidential.

(d) This generally includes information provided and received with the understanding that it will be kept privileged or confidential.

(e) 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.

(f) The exemption may be used to help the source 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.

(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. 2320–2321 and 48 CFR 227.4.

(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.

(g) If release of the subject material would prejudice your commercial interests, give detailed written reasons that identify the specific information and the competitive harm it will cause to you, your organization, or your business. The Act requires we provide any reasonably segregable part of a record after deleting exempt parts. So, tell us if deleting key words or phrases would adequately protect your interests.

(h) If you do not prove the probability of substantial harm to your competitive position or other commercial interests, we may be required to release the information. Records qualify for protections case by case.

PART 806b–AIR FORCE PRIVACY ACT PROGRAM

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APPENDIX C TO PART 806B—GENERAL AND SPECIFIC EXEMPTIONS

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SOURCE: 59 FR 53099, Oct. 21, 1994, unless otherwise noted.

Subpart A—Overview of the Privacy Act Program

§ 806b.1 Basic guidelines.

The Privacy Act of 1974 and this part apply only to information in Air Force systems of records on living United

States citizens and permanent resident aliens.

(a) An official system of records must be:

(1) Authorized by law or Executive Order.

(2) Controlled by an Air Force or lower level directive.

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

(b) The Air Force does 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 an authorized law enforcement activity.

(2) Penalize or harass an individual for exercising rights guaranteed under the Privacy Act. Give reasonable aid to individuals exercising their rights.

(c) Air Force members:

(1) Keep paper and electronic records containing personal information and retrieved by name or personal identifier only in approved systems published in the FEDERAL REGISTER.

(2) Collect, maintain, and use information in such systems only to support programs authorized by law or Executive Order.

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

(4) Keep the records timely, accurate, complete, and relevant.

(5) Amend and correct records on request.

(6) Let individuals 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.

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

§806b.2 Violation penalties.

An individual may file a civil 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.3 Personal notes.

If you keep personal notes on individuals to use as memory aids to supervise or perform other official functions, and do not share them with others, and an Air Force directive does not require their maintenance, the Privacy Act does not apply.

§806b.4 Responsibilities.

(a) The Administrative Assistant to the Secretary of the Air Force (SAF/AA) manages the entire program.

(b) The Office of the General Counsel to the Secretary of the Air Force (SAF/GCA) makes final decisions on appeals.

(c) The Director of Information Management (SAF/AAI), through the Access Programs Office of the Policy Division, (SAF/AAIA):

(1) Administers procedures outlined in this part.

(2) Submits system notices and required reports to the Defense Privacy Office.

(3) Guides major commands (MAJCOM) and field operating agencies (FOA).

(d) MAJCOM and FOA commanders, HQ USAF and Deputy Chiefs of Staff (DCS), and comparable officials, and SAF offices implement this part. Each HQ USAF and SAF office appoints a Privacy Act monitor. Send the name, office symbol, and phone number to SAF/AAIA.

(e) MAJCOM and FOA Information Managers:

(1) Manage the program.

(2) Appoint a command Privacy Act officer.

(3) Send the name, office symbol, and phone number to SAF/AAIA.

(f) Privacy Act Officers:

(1) Guide and train.

(2) Review the program at regular intervals.

(3) Submit reports.

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

(5) Review system notices.

(6) Investigate complaints.

(7) Staff denial recommendations (at MAJCOMs and FOAs only).

(g) System Managers:

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

(2) Manage and safeguard the system.

(3) Train personnel on Privacy Act requirements.

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

(5) Prepare system notices and reports.

(6) Answer Privacy Act requests.

(7) Keep records of disclosures.

(8) Evaluate the systems annually.

(h) Privacy Act Monitors (PAM):

(1) Are the focal point in their functional area for general Privacy Act questions and correspondence.

(2) Maintain a list of all systems of records and system managers in their area.

(3) Act as liaison with the Privacy Act Officer.

(4) Maintain statistics for the annual Privacy Act report.

Subpart B—Obtaining Law Enforcement Records and Promises of Confidentiality

§ 806b.5 Obtaining law enforcement records.

The Commander AFOSI; the Chief, Air Force Security Police Agency (AFSPA); MAJCOM, FOA, and base chiefs of security police; AFOSI 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.6 Promising confidentiality.

Record promises of confidentiality to exempt from disclosure any 'confidential' information under subsections (k)(2), (k)(5), or (k)(7) of the Privacy Act.

Subpart C—Collecting Personal Information

§ 806b.7 How to collect personal information.

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

(a) You must verify information.

(b) You want opinions or evaluations.

(c) You can't contact the subject.

(d) The subject asks you.

§ 806b.8 When to give Privacy Act statements (PAS).

(a) Give a PAS orally or in writing:

(1) To anyone from whom you are collecting personal information that will be put in a system of records.

(2) Whenever you ask someone for his or her Social Security Number (SSN).

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 PAS if asked. Do not ask the person to sign the PAS.

(3) A PAS must include four items:

(i) Authority: The legal authority, that is, the United States Code or Executive Order authorizing the program the system supports.

(ii) Purpose: The reason you are collecting the information.

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

(iv) 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.9 Requesting the social security number (SSN).

(a) Do not deny people a legal right, benefit, or privilege for refusing to give their SSNs unless the law requires disclosure, or a law or regulation adopted before January 1, 1975, required the SSN and the Air Force uses it to verify a person's identity in a system of records established before that date.

When you ask for an SSN to create a record, tell the individual:

(1) The statute, regulation, or rule authorizing you to ask for the SSN.

(2) The uses that will be made of the SSN.

(3) If he or she is legally obligated to provide the SSN.

(b) The Air Force requests an individual's SSN 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 SSN as a service or employment number to reference the individual's official records. When you ask someone for an SSN as identification (ID) to retrieve an existing record, you do not have to restate this information.

(c) Executive Order 9397, November 22, 1943, authorizes using the SSN as a personal identifier. This order is not adequate authority to collect an SSN to create a record. When law does not require disclosing the SSN or when the system of records was created after January 1, 1975, you may ask for the SSN, but the individual does not have to disclose it. If the individual refuses to respond, use alternative means of identifying records.

(d) SSNs are personal and unique to each individual. Protect them as FOR OFFICIAL USE ONLY (FOUO). Do not disclose them to anyone without an official need to know.

Subpart D—Giving Access to Privacy Act Records

§806b.10 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 without access to notary services may use 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.11 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 (FOIA) and the Privacy Act regardless of the Act cited. The requester need not cite any Act. Process the request under whichever Act gives the most information. When necessary, tell the requester under which Act you processed the request 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 in AFDIR 37–144[1], 'Privacy Act Systems of Record' (formerly AFR 4–36).

(b) Requesters should not use government equipment, supplies, stationery, postage, telephones, or official mail channels for making Privacy Act requests. Privacy Act Officers and system managers process such requests but 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 receiving them. 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 C of this part; or published as a final rule in the FEDERAL REGISTER. Give information in a form the requester can understand.

(e) If the requester wants another person present during the record review, the system manager may ask for

[1] Copies may be obtained at cost from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

written consent to authorize discussing the record with another person present.

§ 806b.12 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 the fee for the first 100 pages if records show that the Air Force already responded to a request for the same records at no charge. 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.

§ 806b.13 Denying or limiting access.

Process access denials within five 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 (including the applicable exemption) to the denial authority through the Staff Judge Advocate (SJA) and the Privacy Act officer. The SJA gives a written legal opinion on the denial. The MAJCOM or FOA Privacy Act officer reviews the file, gets written advice from the SJA and the functional office of primary responsibility (OPR), 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.

(a) Before you deny a request for access to a record, make sure that:

(1) The system has an SAF approved exemption.

(2) The exemption covers each document.

(3) Nonexempt parts are segregated.

(b) You may refuse to give out medical records if a physician believes that doing so could harm the person's mental or physical health. You have these options:

(1) 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.

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

(c) Do not delete third-party information from a record when the subject requests access, except as noted in § 806b.13(d), unless the Air Force covers the record with an established exemption (appendix C of this part). Presume that all information in a file pertains to the subject of the file.

(d) Do not release third-party personal data (such as SSN and home address). This action is not a denial.

(e) 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.14 Denial authorities.

These officials or a designee may deny access or amendment of records. Send a letter to SAF/AAIA with the position titles of designees. You must get SAF/AA approval before delegating this authority to a lower level. Send requests for waiver with justification to SAF/AAIA. Authorities are:

(a) DCSs and chiefs of comparable offices or higher level at SAF or HQ USAF.

(b) MAJCOM or FOA commanders.

(c) HQ USAF/DPCP, Pentagon, Washington, DC 20330–5060 (for civilian personnel records).

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

Subpart E—Amending the Record

§ 806b.15 Amendment reasons.

Individuals may ask to have their records amended to make them accurate, timely, relevant, or complete. System managers routinely correct a

record if the requester can show that it is factually wrong.

§806b.16 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.17 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. This action constitutes a denial, and requesters may appeal. If the system manager decides not to amend or partially amend the record, send a copy of the request, the record, and the recommended denial reasons to the denial authority through the SJA and the Privacy Act officer. SJAs will include a legal opinion.

(a) The MAJCOM or FOA Privacy Act officer reviews the proposed denial, gets a legal opinion from the SJA and written advice from the functional OPR, 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.

§806b.18 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 (AFBCMR). Record correction requests denied by the AFBCMR are not subject to further consideration under this part.

§806b.19 Appeal procedures.

(a) Individuals 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 SAF/AAIA, including:

(1) Original appeal letter.

(2) Initial request.

(3) Initial denial.

(4) Copy of the record.

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

(6) Denial authority's comments on the appellant's arguments.

(7) Legal reviews.

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

(c) SAF/AAIA reviews the denial and forwards to SAF/GCA for legal review or staffing to grant or deny the appeal. SAF/GCA tells the requester the final Air Force decision and explains judicial review rights.

(d) The requester may file a concise statement of disagreement with the system manager if SAF/GCA denies the request to amend the record. SAF/GCA explains the requester's rights when they issue the final appeal decision.

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

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

(3) 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.

(4) The system manager may include a brief summary of the reasons for not amending the record. Limit the summary to the reasons SAF/GCA gave to the individual. The summary is part of the individual's record, but it is not subject to amendment procedures.

§ 806b.20 Contents of Privacy Act case files.

Do not keep copies of disputed records in this file. 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—Privacy Act Notifications

§ 806b.21 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 personal information in a system of records. Also include the warning statement when publications direct collection of the SSN from the individual. The warning statement will cite legal authority and the system of records number and title. You can use the following warning statement: 'This part 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.22 Publishing system notices.

The Air Force must publish notices in the FEDERAL REGISTER of new, amended, and deleted systems to inform the public of what records the Air Force keeps and give them an opportunity to comment. The Privacy Act also requires submission of new or significantly altered systems to the Office of Management and Budget (OMB) and both houses of the 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.23 Timing of notices.

At least 120 days before the effective start date, system managers must send the system notice to SAF/AAIA on a 5 1/4 or 3 1/2–inch disk in Wordstar (ASCII text file) or Microsoft Word, with a paper copy highlighting any changes through the MAJCOM or FOA Privacy Act Officer. See Appendix B of this part for a sample system notice.

Subpart G—Protecting and Disposing of Records

§ 806b.24 Protecting records.

Protect information according to its sensitivity level. Consider the personal sensitivity of the information and the risk of loss or alteration. Most information in systems of records is FOR OFFICIAL USE ONLY (FOUO). Refer to AFI 37–131[2], 'Air Force Freedom of Information Act Program,' for protection methods.

§ 806b.25 Balancing protection.

Balance additional protection against risk and cost. AF Form 3227, 'Privacy Act Cover Sheet', is available for use with Privacy Act material. For example, a password may be enough protection for an automated system with a log-on protocol. Classified computer systems or those with established audit and password systems are obviously less vulnerable than unprotected files or word processors in offices that are periodically empty. Follow AFI 33–202[3], 'The Air Force Computer Security Program,' for procedures on safeguarding personal information in automated records.

§ 806b.26 Disposing of records.

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

[2] See footnote 1 to section 806b.11, of this part.

[3] See footnote 1 to section 806b.11, of this part.

(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 (DRMO) or through activities who manage a base-wide recycling program. 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 H—Privacy Act Exemptions

§806b.27 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 should send a request to SAF/AAIA through the MAJCOM or FOA Privacy Act Officer. The request should detail the reasons for the exemption and the section of the Act that allows the exemption. SAF/AAIA gets approval for the request through SAF/AA and the Defense Privacy Office.

§806b.28 Exemption types.

(a) A general exemption frees a system from most parts of the Privacy Act.

(b) A specific exemption frees a system from only a few parts of the Privacy Act.

§806b.29 Authorizing exemptions.

Only SAF/AA can exempt systems of records from any part of the Privacy Act. Denial authorities can withhold records using these exemptions only if SAF/AA previously approved and published an exemption for the system in the FEDERAL REGISTER. Appendix C of this part lists the systems of records that have approved exemptions.

§806b.30 Approved exemptions.

Approved exemptions exist under 5 U.S.C. 552a for:

(a) Certain systems of records used by activities whose principal function is criminal law enforcement (subsection (j)(2)).

(b) Classified information in any system of records (subsection (k)(1)).

(c) Law enforcement records (other than those covered by subsection (j)(2)). 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) (subsection (k)(2)).

(d) Statistical records required by law. Data is for statistical use only and may not be used to decide individuals' rights, benefits, or entitlements (subsection (k)(4)).

(e) Data to determine suitability, eligibility, or qualifications for federal service or contracts, or access to classified information if access would reveal a confidential source (subsection (k)(5)).

(f) Qualification tests for appointment or promotion in the federal service if access to this information would compromise the objectivity of the tests (subsection (k)(6)).

(g) Information which the Armed Forces uses to evaluate potential for promotion if access to this information would reveal a confidential source (subsection (k)(7)).

Subpart I—Disclosing Records to Third Parties

§806b.31 Disclosure considerations.

Before releasing personal information to third parties, consider the consequences, check accuracy, and make sure that no law or directive bans disclosure. You can release personal information to third parties when the subject agrees orally or 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 PSC Directory' (see AFI 37–129[4], 'Base and Unit Personnel Locators and Postal Directories').

(a) Before including personal information such as home addresses, home phones, and similar information on social rosters or directories, ask for written consent statements. Otherwise, do not include the information.

(b) You must get written consent before releasing any of these items of information:

(1) Marital status.

(2) Number and sex of dependents.

(3) Gross salary of military personnel (see § 806b.32 for releasable pay information).

(4) Civilian educational degrees and major areas of study.

(5) School and year of graduation.

(6) Home of record.

(7) Home address and phone.

(8) Age and date of birth.

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

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

§ 806b.32 Disclosing information for which consent is not required.

You don't need consent before releasing any of these items:

(a) Information releasable under the FOIA.

(b) Information for use within the Department of Defense by officials or employees with a need to know.

(c) Name.

(d) Rank.

(e) Grade.

(f) Air Force specialty code (AFSC).

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

(h) Gross salary for civilians.

(i) Past duty assignments.

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

(k) Position title.

(l) Office, unit address, and duty phone number.

(m) Date of rank.

(n) Entered on active duty (EAD) date.

(o) Pay date.

(p) Source of commission.

(q) Professional military education.

(r) Promotion sequence number.

(s) Military awards and decorations.

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

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

(v) Biographies and photos of key personnel.

§ 806b.33 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.34 Agencies or individuals to whom the Air Force may release privacy information.

The Air Force may release information without consent to these individuals or agencies:

(a) Agencies outside the Department of Defense for a Routine Use published in the FEDERAL REGISTER. The purpose of the disclosure must be compatible with the purpose in the Routine Use. When initially collecting the information from the subject, the Routine Uses block in the Privacy Act Statement must name the agencies and reason.

(b) The Bureau of the Census to plan or carry out a census or survey under 13 U.S.C. 8.

(c) A recipient for statistical research or reporting. The recipient must give advanced written assurance that

[4] See footnote 1 to section 806b.11, of this part.

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.

(d) The Archivist of the United States and the National Archives and Records Administration (NARA) to evaluate records for permanent retention. Records stored in Federal Records Centers remain under Air Force control.

(e) A federal, state, or local agency (other than the Department of Defense) 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. The system manager may also disclose a record to a law enforcement agency if the agency suspects a criminal violation. This disclosure is a Routine Use for all Air Force systems of records and is published in the FEDERAL REGISTER.

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

(g) The Congress, a congressional committee, or a subcommittee, for matters within their jurisdictions.

(h) A congressional office acting for the record subject. A published, blanket Routine Use permits this disclosure. If the material for release is sensitive, get a release statement.

(i) The Comptroller General or an authorized representative of the General Accounting Office on business.

(j) A court order of a court of competent jurisdiction, signed by a judge.

(k) A consumer credit agency according to the Debt Collections Act when a published system notice lists this disclosure as a Routine Use.

(l) A contractor operating a system of records under an Air Force contract. Records maintained by the contractor for the management of contractor employees are not subject to the Privacy Act.

§806b.35 Disclosing the medical records of minors.

Air Force personnel may disclose the medical records of minors to their parents or legal guardians. 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 SJA.

(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.36 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 FOIA. System managers may use AF Form 771, 'Accounting of Disclosures'.

(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.

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

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

§806b.37 Computer matching.

Computer matching programs electronically compare records from two or more automated systems which may include the Department of Defense, 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:

(a) Prepare a written agreement between participants.

(1) Secure approval of the Defense Data Integrity Board.

(2) Publish a matching notice in the FEDERAL REGISTER before matching begins.

(3) Ensure full investigation and due process.

(4) Act on the information, as necessary.

(b) The Privacy Act applies to matching programs that use records from:

(1) Federal personnel or payroll systems.

(2) Federal benefit programs where matching:

(i) Determines federal benefit eligibility,

(ii) Checks on compliance with benefit program requirements,

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

(c) 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.

(d) Any activity that expects to participate in a matching program must contact SAF/AAIA 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 SAF/AAIA. Allow 180 days for processing requests for a new matching program.

(e) 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 SAF/AAIA through the MAJCOM Privacy Act Officer.

Subpart J—Training

§ 806b.38 Who needs training.

The Privacy Act requires training for all persons involved in the design, development, operation and maintenance of any system of records. Some persons may need more specialized training. They include information managers, supervisors, and individuals working with medical, financial, security, and personnel records.

§ 806b.39 Training tools.

Helpful aids include:

(a) AFH 37–146[5], 'Privacy Act Training', a self-paced course.

(b) 'The Privacy Act of 1974,' a 32–minute film developed by the Defense Privacy Office. Consult your local audiovisual library.

(c) 'A Manager's Overview, What You Need to Know About the Privacy Act'. Contact SAF/AAIA for copies.

NOTE: Formal school training groups that develop or modify blocks of instruction must send the material to SAF/AAIA for coordination.

Subpart K—Privacy Act Reporting

§ 806b.40 Privacy Act Report (RCS: DD–DA&M(A)1379).

By March 1, of each year, MAJCOM and FOA Privacy Act officers must send SAF/AAIA a report covering the previous calendar year. The report includes:

(a) Total number of requests granted in whole.

(b) Total number of requests granted in part.

(c) Total number of requests denied and the Privacy Act exemptions used.

(d) Total number of requests for which no record was found.

(e) Total number of amendment requests granted in whole.

(f) Total number of amendment requests granted in part.

(g) Total number of amendment requests wholly denied.

(h) Specific recommendations for changes to the Act or the Privacy Act Program.

[5] See footnote 1 to section 806b.11, of this part.

APPENDIX A TO PART 806b—GLOSSARY OF REFERENCES, ABBREVIATIONS, ACRONYMS, AND TERMS

Section A–References

a. Privacy Act of 1974, as amended, Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

b. 10 U.S.C 8013, 'Secretary of the Air Force: Powers and Duties.'

c. Executive Order 9397, 'Numbering System for Federal Accounts Relating to Individual Persons.'

d. 32 CFR part 806b, 'Air Force Privacy Act Program.'

e. DoD Directive 5400.11[1], 'Department of Defense Privacy Program.'

f. DoD 5400.11–R[2], 'Department of Defense Privacy Program.'

g. AFI 33–202[3], 'The Air Force Computer Security Program' (formerly AFR 205–16).

h. AFPD 37–1[4], 'Air Force Information Management.'

i. AFI 37–131[5], 'Air Force Freedom of Information Act Program' (formerly AFR 4–33).

j. AFI 37–129[6], 'Base and Unit Personnel Locators and Postal Directories' (formerly AFR 11–24).

k. AFMAN 37–139[7], 'Disposition of Records' (formerly AFR 4–20, volume 2).

l. AFDIR 37–144[8], 'Air Force Privacy Act Systems of Records Notices.'

m. AFH 37–146[9], 'Privacy Act Training.'

Section B–Definitions Abbreviations and Acronyms

a. AETC – Air Education and Training Command

b. AFA – Air Force Academy

c. AFBCMR – Air Force Board for Correction of Military Records

d. AFISA – Air Force Intelligence Services Agency

e. AFMC – Air Force Materiel Command

f. AFOSI – Air Force Office of Special Investigations

g. AFSC – Air Force Specialty Code

h. AFSCO – Air Force Security Clearance Office

i. AFSPA – Air Force Security Police Agency

j. ASCII – American Standard Code for Information Interchange

k. BAQ – Basic Allowance for Quarters

l. CFR – Code of Federal Regulations

m. DCS – Deputy Chief of Staff

n. DoD – Department of Defense

o. DR&MO – Defense Reutilization and Marketing Office

p. EAD – Entered on Active Duty

q. FOA – Field Operating Agency

r. FOIA – Freedom of Information Act

s. FOUO – For Official Use Only

t. IG – Inspector General

u. IMC – Interim Message Change

v. LE – Logistics and Engineering

w. MAJCOM – Major Command

x. MIRS – Management Information and Research System

y. MP – Military Personnel

z. MPC – Military Personnel Center

aa. NARA – National Archives and Records Administration

bb. OMB – Office of Management and Budget

cc. OPR – Office of Primary Responsibility

dd. PA – Privacy Act

ee. PAM – Privacy Act Monitor

ff. PAS – Privacy Act Statement

gg. RCS – Reports Control Symbol

hh. SAF – Secretary of the Air Force

ii. SAF/AA – The Administrative Assistant to the Secretary of the Air Force

jj. SAF/AAIA – Policy Division, Directorate of Information Management

kk. SAF/GCA – Assistant General Counsel for Civilian Personnel and Fiscal Law

ll. SG – Surgeon General

mm. SJA – Staff Judge Advocate

nn. SP – Security Police

oo. SSN – Social Security Number

pp. US – United States

qq. USAF – United States Air Force

rr. U.S.C. – United States Code

ss. VHA – Variable Housing Allowance

Section C–Terms

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

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

c. *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.

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

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[1] Copies may be obtained at cost from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to section B, appendix A to part 806b.

[3] See footnote 1 to section B, appendix A to part 806b.

[4] See footnote 1 to section B, appendix A to part 806b.

[5] See footnote 1 to section B, appendix A to part 806b.

[6] See footnote 1 to section B, appendix A to part 806b.

[7] See footnote 1 to section B, appendix A to part 806b.

[8] See footnote 1 to section B, appendix A to part 806b.

[9] See footnote 1 to section B, appendix A to part 806b.

e. *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.

f. *Defense Data Integrity Board.* Representatives from the Services and the Department of Defense who oversee, coordinate, and approve all DoD computer matching programs covered by the Act.

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

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

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

j. *Individual.* A living United States citizen or a permanent resident alien.

k. *Matching agency.* The agency that performs a computer match.

l. *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.

m. *Personal identifier.* A name, number, or symbol which is unique to an individual, usually the person's name or SSN.

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

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

p. *Recipient agency.* An agency or contractor that receives the records and actually performs the computer match.

q. *Record.* Any information about an individual.

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

s. *Source agency.* A federal, state, or local government agency that discloses records for the purpose of a computer match.

t. *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.

u. *System of records.* A group of records containing personal information retrieved by the subject's name, personal identifier, or individual identifier through a cross-reference system.

v. *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:

a. *System identifier.* SAF/AAIA assigns the notice number, for example, F011 AFMC A, where 'F' indicates 'Air Force,' the next number represents the series from AFMAN 37–139 regarding records disposition, and the final letter group shows the system manager's command or DCS. The last character 'A' indicates that this is the first notice for this series and system manager.

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

c. *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.

d. *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.

e. *Categories of records in the system.* Describe in clear, nontechnical terms, 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.

f. *Authority for maintenance of the system.* Cite the specific law or Executive Order that authorizes the program the records support. Cite the DoD directive or instruction or the Air Force or other instruction that authorizes the system of records. Always include titles with the citations.

NOTE: Executive Order 9397 authorizes using the Social Security Number (SSN). Include this authority whenever the SSN is used to retrieve records.

g. *Purpose(s).* Describe briefly and specifically what the Air Force does with the information collected.

h. *Routine uses of records maintained in the system including categories of users and the purpose of such uses.* The Blanket Routine Uses published in the Air Force Directory of System Notices apply to all system notices unless you indicate otherwise. Also list each specific agency or activity outside DoD to whom the records may be released and the purpose for such release.

i. *Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system.*

j. *Storage.* State the medium in which the Air Force keeps the records, for example, in file folders, card files, microfiche, computer, and so on. Storage does not refer to the storage container.

k. *Retrievability.* State how the Air Force retrieves the records, for example, by name, SSN, or personal characteristics (such as fingerprints or voiceprints).

l. *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.

m. *Retention and disposal.* State how long AFMAN 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.

n. *System manager(s) and address.* List the 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.

o. *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, SSN, date of birth, or proof of identity, and so on.

p. *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.

q. *Contesting records procedures.* SAF/AAIA provides this standard caption.

r. *Record source categories.* Show categories of individuals or other information sources for the system. Do not list confidential sources protected by subsections (k)(2), (k)(5), or (k)(7) of the Act.

s. *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—GENERAL AND SPECIFIC EXEMPTIONS

(a) *General exemption.* The following systems of records are exempt under 5 U.S.C. 552a(j)(2):

(1) *System identifier and name:* F124 AF A, Counter Intelligence Operations and Collection Records.

(2) *System identifier and name:* F124 AF C, Criminal Records.

(3) *System identifier and name:* F125 AF SP E, Security Police Automated System (SPAS).

(4) *System identifier and name:* F124 AF D, Investigative Support Records.

(5) *System identifier and name:* F125 AF A, Correction and Rehabilitation Records.

Exemption–Portions of this system that fall within 5 U.S.C.552a(j)(2) are exempt from the following provisions of 5 U.S.C. 552a, Sections (c)(3) and (c)(4); (d)(1) through (d)(5); (e)(2) and (e)(3); (e)(4)(G) and (e)(4)(H), (e)(5); (f)(1) through (f)(5); (g)(1) through (g)(5); and (h) of the Act.

Authority–5 U.S.C. 552a(j)(2).

Reason–The general exemption will protect ongoing investigations and 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 files.

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

(1) *Classified records.*

(i) All records in any systems of records that are properly classified according to Executive Orders 11652, 12065 or 12958, are exempt from 5 U.S.C. 552a(c)(3); (d); (e)(4)(G), (H), and (I); and (f), regardless of whether the entire system is otherwise exempt or not.

(ii) *Authority.* 5 U.S.C. 552a(k)(1).

(2) *System identifier and name:* F053 AFA C, Admissions and Registrar Records.

(i) *Exemption.* Parts of this system of records (Liaison Officer Evaluation and Selection Panel Candidate Evaluation) are exempt from 5 U.S.C. 552a(d), (e)(4)(H), and (f), but only to the extent that disclosure would reveal the identity of a confidential source.

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

(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.

(3) *System identifier and name:* F035 MPC R, Air Force Personnel Test 851, Test Answer Cards.

(i) *Exemption.* This system is exempt from 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.

(4) *System identifier and name:* F035 AFA A, Cadet Personnel Management System.

(i) *Exemption.* Parts of this system are exempt from 5 U.S.C. 552a(d), (e)(4)(H), and (f), but only insofar as disclosure would reveal the identity of a confidential source.

(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.

(5) *System identifier and name:* F045 AETC C, Cadet Records.

(i) *Exemption*. Portions of this system (Detachment Professional Officer Course (POC) Selection Rating Sheets; Air Force Reserve Officer Training Corps (AFROTC) Form 0–24–Disenrollment Review; Memoranda for Record and Staff Papers with Staff Advice, Opinions, or Suggestions) are exempt from 5 U.S.C. 552a(c)(3); (d); (e)(4)(G) and (H), and (f), but only to the extent that disclosure would reveal the identity of a confidential source.

(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.

(6) *System identifier and name:* F168 AF SG B, Family Advocacy Program Record.

(i) *Exemption*. Parts of this system are exempt from 5 U.S.C. 552a(c)(3) and (d), but only to the extent that disclosure would reveal the identity of a confidential source.

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

(iii) *Reasons*. To encourage those who know of exceptional medical or educational conditions or family maltreatments to come forward by protecting their identities, and the integrity of ongoing and civil law investigations of criminal and civil law violations. Giving subjects access to their files could result in them concealing, altering, or fabricating evidence could hamper the identification of offenders and alleged offenders; and could jeopardize the safety and well–being of the family.

(7) *System identifier and name:* F035 AF MP A, Effectiveness/Performance Reporting System.

(i) *Exemptions*–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 from 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*–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.

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

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).

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

(8) [Reserved]

(i) *Exemption*. This system is exempt from 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).

(iii) *Reasons*. To enforce civil laws, court orders, and the activities of the Departments of Housing and Urban Development and Justice.

(9) *System identifier and name:* F035 AP A, Files on General Officers and Colonels Assigned to General Officer Positions.

(i) *Exemption*. This system is exempt from 5 U.S.C. 552a(c)(3); (d); (e)(4)(G), (H), and (I); and (f), but only to the extent that disclosure would reveal the identity of a confidential source.

(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.

(10) *System identification and name:* F035 AF MP P, General Officer Personnel Data System.

(i) *Exemption*– Air Force General Officer Promotion and Effectiveness Reports with close out dates on or before January 31, 1991, may be exempt from 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*–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.

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

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).

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

(11) *System identifier and name:* F035 MPC L, Historical Airman Promotion Master Test File.

(i) *Exemption*. This system is exempt from 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.

(12) *System identifier and name:* F120 AF IG B, Inspector General Records.

(i) *Exemption.* This system is exempt from 5 U.S.C. 552a(c)(3); (d); (e)(4) (G), (H), and (I); and (f). However, if a person is denied any right, privilege, or benefit, he or she would otherwise be entitled to as a result of keeping this material, it must be released, unless doing so would reveal the identity of a confidential source.

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

(iii) *Reasons.* Granting individuals access to information collected while an Inspector General inquiry is in progress could interfere with the just, thorough, and timely resolution of the complaint or inquiry and could possibly enable individuals to conceal wrong doing or mislead the inquiring officer. Disclosure might also subject sources, witnesses, and their families to harassment or intimidation.

(13) *System identifier and name:* F124 AFOSI B, Investigative Applicant Processing Records.

(i) *Exemption.* This system is exempt from 5 U.S.C. 552a(c)(3); (d); (e)(4) (G), (H), and (I); and (f), but only to the extent that disclosure would reveal the identity of a confidential source.

(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 (AFOSI) 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 AFOSI personnel program that relies on selecting only qualified people.

(14) *System identifier and name:* F035 AFB B, Master Cadet Personnel Record (Active/Historical).

(i) *Exemptions.* Parts of these systems are exempt from 5 U.S.C. 552a(d), (e)(4)(H), and (f), but only to the extent that they would reveal the identity of a confidential source.

(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.

(15) *System identifier and name:* F205 AFISA A, Sensitive Compartmented Information Personnel Records.

(i) *Exemption.* This system is exempt from 5 U.S.C. 552a(a)(3); (d); (e)(4) (G), (H), and (I); and (f), but only to the extent that disclosure would reveal the identity of a confidential source.

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

(iii) *Reasons.* To protect the identity of sources to whom 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.

(16) *F124 AFA, Security and Related Investigative Records.*

(i) *Exemption.* This system is exempt from 5 U.S.C. 552a(c)(3); (d); (e)(4) (G), (H), and (I); and (f), but only to the extent that disclosure would reveal the identity of a confidential source.

(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.

(17) *System identifier and name:* F205 AFSCO A, Special Security Case Files.

(i) *Exemption.* This system is exempt from 5 U.S.C. 552a(c)(3); (d), (e)(4) (G), (H), and (I); and (f), but only to the extent that disclosure would reveal the identity of a confidential source.

(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.

(18) *System identifier and name:* F205 AF SP A, Special Security Files.

(i) *Exemption.* This system is exempt from 5 U.S.C. 552a(c)(3); (d); (e)(4) (G), (H), and (I); and (f), but only to the extent that disclosure would reveal the identity of a confidential source.

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

(ii) *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.

(19) *System identifier and name:* F035 AF MP R, Applications for Appointment and Extended Active Duty Files.

(i) *Exemption.* Parts of this system of records are exempt from 5 U.S.C. 552a(d), but only to the extent that disclosure would reveal the identity of a confidential source.

(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.

(20) *System identifier and name:* F111 AF JA B, Courts-Martial and Article 15 Records.

(i) *Exemption.* 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).

(ii) *Exemption.* Portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(k)(2) from the following subsection of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f).

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

(iv) *Reason:* (1) 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.

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

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

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

(12) 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).

(13) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Air Force will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Air Force's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal 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.

[59 FR 53099, Oct. 21, 1994, as amended at 60 FR 36224, July 14, 1995; 61 FR 2917, Jan. 30, 1996; 61 FR 17070, Apr. 9, 1997]

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—ENFORCEMENT OF ORDER AT AIR FORCE INSTALLATIONS, CONTROL OF CIVIL DISTURBANCES, SUPPORT OF DISASTER RELIEF OPERATIONS, AND SPECIAL CONSIDERATION FOR OVERSEAS AREAS

Sec.
809a.0 Purpose.

Subpart A—Enforcement of Order at or Near Air Force Installations

809a.1 Military responsibility and authority.
809a.2 Civil responsibility and authority.
809a.3 Unauthorized entry to installations.
809a.4 Use of Government facilities.

Subpart B—Use of Military Forces in Civil Defense, Civil Disturbances, and Disasters

809a.5 Definitions.
809a.6 Base policies and laws.
809a.7 Conditions for use of Air Force resources.
809a.8 Military Commanders' responsibilities.

Subpart C—Special Considerations for Overseas Areas

809a.9 General.
809a.10 Requirements for supplements.

AUTHORITY: Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

§ 809a.0 Purpose.

This part prescribes the commanders' responsibilities for enforcing order at and in the vicinity of installations under their jurisdiction. It provides guidance for the use of Air Force resources in controlling civil disturbances and in supporting disaster relief

operations. This part applies to installations in the continental United States and will be used to the maximum extent possible in the overseas commands, the States of Alaska and Hawaii, the Commonwealth of Puerto Rico, and the territories and possessions of the United States. Instructions issued by the appropriate unified 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 police units to collect and maintain information concerning persons or organizations having no affiliation with the Air Force.

[37 FR 18728, Sept. 15, 1972]

Subpart A—Enforcement of Order at or Near Air Force Installations

§809a.1 Military responsibility and authority.

(a) Air Force installation commanders are responsible for protecting personnel and property under their jurisdictions and for maintaining order on installations, to insure the uninterrupted and successful accomplishment of the Air Force mission.

(b) Each commander is authorized to grant or deny access to his installations, and to exclude or remove persons whose presence is unauthorized. In excluding or removing persons from the installation, he must not act in an arbitrary or capricious manner. His action must be reasonable in relation to his responsibility to protect and to preserve order on the installation and to safeguard persons and property thereon. As far as practicable, he should prescribe by regulation the rules and conditions governing access to his installation.

[37 FR 18728, Sept. 15, 1972]

§809a.2 Civil responsibility and authority.

Local civil authorities are primarily responsible for maintaining order outside the perimeter of an installation. If assistance from civil authorities is insufficient, and the installation commander believes that the employment of Air Force resources is essential, he should send a request for instructions and a report of the circumstances to Hq USAF per Joint Chiefs of Staff (JCS) Pub. 6, Volume V, U.S. Air Force Reporting Instruction, June 1970. Unless an emergency involves imminent danger to personnel or property under the commander's jurisdiction, he is not authorized to act before instructions are received.

[33 FR 4462, Mar. 13, 1968, as amended at 37 FR 18728, Sept. 15, 1972]

§809a.3 Unauthorized entry to installations.

Removal of violators: If unauthorized entry occurs, the violators may be apprehended, ordered to leave, and escorted off the installation by personnel carefully selected for such duties. The complete and proper identification of violators, including the taking of photographs, must be accomplished. Violators who reenter an installation—after having been removed from it or having been ordered, by an officer or person in command or charge, not to reenter—may be prosecuted under 18 U.S.C. 1382. If prosecution for subsequent reentry is contemplated, the order not to reenter should be in writing so as to be easily susceptible of proof. Commanders are cautioned that only civil law enforcement authorities have the power to arrest and prosecute for unauthorized entry of government property.

[33 FR 4462, Mar. 13, 1968, as amended at 37 FR 18728, Sept. 15, 1972]

§809a.4 Use of Government facilities.

Commanders are prohibited from authorizing demonstrations for partisan political purposes but other demonstrations may or may not be authorized only in accordance with the provisions of paragraph 3e, AFR 35–15. They are not to volunteer public statements on demonstrations or possible demonstrations.

[37 FR 18728, Sept. 15, 1972]

Subpart B—Use of Military Forces in Civil Defense, Civil Disturbances, and Disasters

§ 809a.5 Definitions.

(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 goup 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.

[33 FR 4462, Mar. 13, 1968, as amended at 37 FR 18728, Sept. 15, 1972; 37 FR 20243, Sept. 28, 1972]

§ 809a.6 Base 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 asistance 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.

[33 FR 4462, Mar. 13, 1968]

§ 809a.7 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 occcurs 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.

[33 FR 4462, Mar. 13, 1968, as amended at 37 FR 18728, Sept. 15, 1972]

§ 809a.8 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.

[33 FR 4462, Mar. 13, 1968, as amended at 37 FR 18728, Sept. 15, 1972]

Subpart C—Special Considerations for Overseas Areas

§809a.9 General.

The use of Air Force personnel in overseas areas poses unique problems inasmuch as their use is governed by national laws of the country concerned and by the terms of international pact or bilateral agreements to which the United States is signatory.

[37 FR 18729, Sept. 15, 1972]

§809a.10 Requirements for supplements.

The implementation of policies relating to overseas areas must conform to the pertinent terms of the status of forces agreement under which a U.S. Force may be stationed in the foreign host country concerned. Accordingly, major commands must prepare individual supplements to this part for each country in which they have units stationed. These supplements shall contain specific policy and guidance on the use of Air Force personnel. It is essential that each commander clearly understands the status of his installation or base, including that of all sub bases, annexes, housing areas, etc.

[37 18729, Sept. 15, 1972]

SUBCHAPTER B—SALES AND SERVICES

PART 811—RELEASE, DISSEMINATION, AND SALE OF VISUAL INFORMATION MATERIALS

Sec.
811.0 Purpose.
811.1 Exclusions.
811.2 Terms explained.
811.3 Agencies authorized to release VI materials.
811.4 Policy on the dissemination and sale of VI products.
811.5 Restrictions on the use of government VI records.
811.6 Procedures for requesting VI materials.
811.7 How to collect fees.
811.8 Schedule of fees.
811.9 Requests for motion media.
811.10 Requests for still media.

AUTHORITY: 10 U.S.C. 8013.

SOURCE: 56 FR 953, Jan. 10, 1991, unless otherwise noted.

§811.0 Purpose.

This part establishes policy on the release, dissemination, and sale of Air Force visual information (VI) materials. It explains how reproductions may be sold, distributed, or released. It implements 32 CFR part 288 (Department of Defense (DOD) Instruction 7230.7), DOD Directive 4000.19, DOD Directive 7290.3–M, and DOD Directive 5040.2. It is used with 32 CFR part 806 (AFR 12–30, Air Force Freedom of Information Act Program); part 812 (AFR 12–32, Schedule of Fees for Copying, Certifying, and Searching Records and Other Documentary Material); AFR 177–108[1], Paying and Collecting Transactions at Base Level; part 837 (AFR 190–1, Public Affairs Policies and Procedures); and AFR 205–1, Information Security Program. It applies to all Air Force personnel including United States Air Force Reserve and Air National Guard units and members. The term major command (MAJCOM), when used in this part, includes separate operating agencies and direct reporting units.

[1] Air Force publications are available through NTIS, 5285 Port Royal Road, Springfield, VA 22161.

§811.1 Exclusions.

This volume does not apply to:

(a) The sale of aerial reconnaissance or cartographic type photography. Request this photography from the Defense Mapping Agency/ODS, ATTN: DDCP, Washington, DC 20315–0020.

(b) The sale of completed productions. Send requests for purchase of completed Air Force productions to the National Archives and Records Administration, National Audiovisual Center, Information Office, 8700 Edgeworth Drive, Capitol Height, MD 20722–3701.

(c) VI materials made for the Air Force Office of Special Investigations (AFOSI) for use in an investigation or a counterintelligence report. Part 806 and AFR 124–4, Requesting AFOSI Investigations and Safeguarding, Handling and Releasing Information from AFOSI Reports, show who may use these VI materials.

(d) VI materials made for aircraft and missile mishap investigators for investigations of Air Force aircraft and missile mishaps per AFR 127–4, Investigating and Reporting US Air Force Mishaps. Part 806 and AFR 124–4 show who may use these materials.

§811.2 Terms explained.

The following definitions apply to this part.

(a) *Release.* The responsible Air Force agency approval to disseminate copies of Air Force VI materials to public agencies, commercial concerns, governments, and so forth. Air Force agencies with releasing authority are listed in §811.4 of this part. Depending on subject matter, some VI materials may receive automatic or prerelease approval.

(b) *Dissemination.* The DOD Records Center distribution of VI materials approved for release by the authorized Air Force agency. VI materials may be sold or distributed, with or without charge, depending on the circumstances listed in §811.5 of this part.

(c) *Sale.* The collection of money by the DOD records centers for VI products disseminated to activities outside the Federal Government. See §811.5 of

this part for determining when the sale of materials is warranted.

(d) *VI materials.* Normally, still photography, motion pictures, and videos acquired by Air Force organizations as official documentation of Air Force operations and activities, and stored by the DOD still and motion media records centers.

§811.3 Agencies authorized to release VI materials.

(a) According to part 837 of this chapter (AFR 190–1), the Secretary of the Air Force, Office of Public Affairs (SAF/PA), may release VI materials to:

(1) News media, commercial publications, or electronic mail.

(2) Motion picture and television entertainment companies.

(3) Industries.

(4) Nonprofit organizations.

(5) Agencies outside the Federal Government.

(6) The general public (not associated with the news media).

(b) The Secretary of the Air Force, Office of Legislative Liaison (SAF/LL), arranges for the release of VI material through SAF/PA upon request from members of Congress and provides such material for official use.

(c) The International Affairs Division (HQ USAF/CVAII) (or, in some cases, MAJCOM Foreign Disclosure Office) must authorize release of classified and unclassified materials for use by foreign governments and international organizations or their representatives.

§811.4 Policy on the dissemination and sale of VI products.

(a) *Sale of VI material.* Although copies of Air Force VI products may be sold, Air Force policy prohibits competition with commercial industry. When VI materials are sold outside the Federal Government, charges and fees must be assessed according to part 812.

(b) *Dissemination of VI material to state and local governments.* Copies of VI materials that meet the requirements of this part may be loaned or sold to state and local governments, or any tax exempt organization under Title III of the 1968 Intergovernmental Cooperation Act. The requester must certify that the materials are not available from commercial sources. The Air Force Central Visual Information Library (AFCVIL), managed by 1352d Audiovisual Squadron, Norton AFB CA 92409–5996, is the central source for loan of current, completed Air Force VI productions.

(c) *Disseminating and selling activities.* Dissemination and sale of Air Force VI documentation is accomplished by the DOD Motion Media Records Center, operated by the 1352d Audiovisual Squadron (AAVS) (MAC), Norton AFB CA 92409–5996 and the DOD Still Media Records Center, operated by the US Navy at the Anacostia Naval Station, Washington, DC 20374–1681.

(d) *Sale of original VI material.* Original VI material is not for sale. Reproductions of the original may be sold. HQ USAF/SCV may authorize the loan of copies or duplicates of original material for Federal Government use. SAF/PA may lend copies of original material to agencies outside the Federal Government and to the public.

(1) DOD VI records centers use only government-owned VI material in servicing approved requests for dissemination and sale. The use of nongovernment VI material requires written permission from the owner.

(2) Production of material for sale must not stop or slow official Air Force work or be used to justify facility expansion or additional manpower.

(e) *Requests and services exempt from fees.* According to part 813, the sources below are exempt from paying fees if funds are available for producing the material, production does not impair the mission of the furnishing agency, all clearances and releases specified by this part have been obtained, and the work can be done during normal duty hours. When requests cannot be accomplished within the above criteria, fees must be paid by the requester.

(1) DOD and other government agencies requesting VI materials for official activities (DOD Directive 4000.19 and DOD Directive 5040.2).

(2) Members of Congress requesting VI materials for use in official activities.

(3) VI records center materials or services furnished according to law or Executive order.

(4) Federal, state, territorial, county, or municipal governments, or their

agencies, for functions related to or furthering an Air Force or other DOD objective.

(5) Nonprofit organizations for functions related to public health, education, or welfare.

(6) Members of the Armed Forces in a casualty status, their next of kin, or authorized representative, when the requested VI material relates to the member and does not compromise classified information or the work of an accident investigation board.

(7) The general public, to further the Armed Forces recruiting program or public understanding of the Armed Forces, when such VI materials or services are determined by SAF/PA to be in the best interest of the Air Force.

(8) Incidental or occasional requests for VI records center materials or services (including requests from residents of foreign countries) when it is determined that fees would be inappropriate. (For the distribution of VI materials to foreign nations, see AFR 190–1).

(9) Legitimate news organizations working on news-related productions, news documentaries, or print products intended to inform the public on Air Force activities.

§ 811.5 Restrictions on the use of government VI records.

Activities sending materials to the DOD VI records centers must make sure that any limitation on use is noted on the materials. The following restrictions on VI material disseminated or sold from the records centers must also be observed:

(a) Materials must not be used to endorse a commercial service or product.

(b) Rights to official Air Force VI material may not be claimed by any other government agency or person.

(c) The waiver of proprietary and privacy rights cannot be granted with the sale or release of VI materials unless these rights and the rights of transfer are owned by the Air Force.

(d) VI materials received from Air Force contractors may be released, disseminated, or sold if not identified as proprietary material in the applicable contract.

(e) When provisions of formal agreements between the Air Force and other government agencies on release of VI materials differ from this part, the provisions of the formal agreements apply.

§ 811.6 Procedures for requesting VI materials.

(a) Informal inquiries may be made to the appropriate DOD records center on VI materials available in broad subject areas. Informal inquiries are not formal requests. Research of, or access to, materials are provided only in response to a formal request. Inquiries regarding motion picture or television materials should be sent to the DOD Motion Media Records Center (1352 AVS/DO, Norton AFB CA 92409–5996). Inquiries regarding still photo materials should be sent to the DOD Still Media Records Center, ATTN: Code SSRC, Washington, DC 20374–1681.

(b) Submit formal requests according to §§ 811.9 and 811.10. When notified of approval, the requester may communicate directly with the DOD Motion Media Records Center to select materials. Air Force still photography customers must contact the 1361st AVS/DOSC, Andrews AFB DC 20334 to select still photo materials.

§ 811.7 How to collect fees.

(a) When appropriate, the Air Force or DOD activity making the sale collects the funds in advance. Exceptions include requirements where actual cost cannot be determined until work is completed. For example, television and motion picture services where the charge is by minute or footage.

(b) The fees due the United States must be paid by cash, United States Treasury check, certified check, cashier's check, bank draft, or postal money order.

§ 811.8 Schedule of fees.

Fees are established by DOD and are as follows:

(a) *Still photography*. Still pictorial or documentary photographic prints. Unlisted standard sizes of prints may be furnished, if available, at prevailing contract or activity rates.

	Price per print (quantity)			
	1–9	10–20	21–50	50+
8″×10″ single weight (RC type) paper	$4.50	$3.25	$2.50	$1.75
11″×14″ single weight (RC type) paper	9.00	7.00	5.00	4.00
16″×20″ single weight (RC type) paper	19.00	15.00	12.00	9.50
20″×24″ single weight (RC type) paper	30.00	25.00	20.00	15.00
8″×10″ single weight color paper	11.00	7.50	3.50	3.00
11″×14″ single weight color paper	17.00	9.00	6.50	5.50
16″×20″ single weight (RC type) paper	35.00	25.00	14.00	11.50
35mm color transparency slide made from color negative	5.00	3.50	3.00	3.00
35mm duplicate from 35mm slide	1.00	.60	.50	.45
Print mounted on 16″×20″ cardboard	[1] 8.00	.....	.....	.....
Print mounted on 20″×24″ cardboard	[1] 12.00	.....	.....	.....
8″×10″ color transparencies	[2] 20.00	.....	.....	.....
4″×5″ color transparencies	4.50	.....	.....	.....
4″×5″ B&W negative	2.00	.....	.....	.....
70mm color negative	7.50	.....	.....	.....

[1] Unit price of print.
[2] (First); 16.00 each additional.

NOTE: DOD Still Records Center photographic services are not normally done in house by DOD. Charges for processing and services will be at prevailing contract or commercial rates or at government cost, whichever is higher. All prices are subject to change without notice. Fees for copies of photographs which are part of a patient's medical record should be coordinated with the Patient Affairs Officer at the medical treatment facility.

(b) *Motion picture.*

	Price Per Foot Contact
Color:	
16mm work print (positive work print from an original negative	$.20
16mm reversal work print	.20
16mm duplicate negative (from master positive)	.60
16mm interpositive/internegative	.85
16mm internegative (from reversal original)	.70
16mm tab-to-tab printing	.20 +basis price
Black and White:	
16mm master positive (fine grain)	.25
16mm duplicate negative	.25
16mm tab-to-tab printing	.10 +basic price
Miscellaneous:	
Magnetic tape dub from 16mm film	$65.00
Searching (first hour minimum then fraction thereof)	100.00/ 25.00
16mm film to videotape transfer	5.00 per minute
Videotape to videotape transfer	5.00 per minute

NOTE: Some motion picture services are not done in house by the DOD. Charges for these types of processing and services will be at prevailing contract or commercial rates or at government cost, whichever is higher. Prices are subject to change without notice.

[56 FR 953, Jan. 10, 1991; 56 FR 10945, Mar. 14, 1991; 56 FR 12583, Mar. 26, 1991]

§ 811.9 Request for motion media.

RULE	A	B	C	D	E
		and material requested is			
	If the requester is	unclassified	classified	then furnish in writing the	and send the request to
1	news media	x	– –	– –	SAF/PA, Wash DC 20332-6468 for regional, national or international release; servicing PA for local release.
2	the general public including entertainment, documentary, advertisers, industrial media producers, editors & writers	x	– –	sequence outline of script; intended use of the film/video; type of film stock needed (neg, interneg, print, 3/4" video tape); approx number of screen feet	SAF/PA, Wash DC 20332-6468
3	an Air Force or other Federal Government agency	x	– –	intended use of the film/video type stock needed (neg, interneg, print, 3/4" video tape); approx number of screen feet/minutes	1352 AVS/DO, Norton AFB CA 92409-5996
4	a Federal Government contractor (to meet VI requirements specified in federal contract)	x	– –	intended use of the material; type of material needed (print, neg, interneg, video); required number of prints, slides, negs, etc.; a full justification for access to classified material (if applicable)	USAF plant representative.
5	an Air Force contractor (to meet VI requirements specified in a USAF contract)	– –	x		USAF plant representative
6	a Federal Government contractor (to provide material for public release)	x	– –		
7	USAF plant representative (to provide material to Federal Government contractor that is specified in federal contract)	x	– –		1352 AVS/DO, Norton AFB, CA 92409-5996
8	USAF plant representative (to provide material to Federal Government contractor for release to public)	x	– –		SAF/PA, 1352 AVS/DO IN TURN
9	USAF plant representative (to provide material to an Air Force contractor that was specified in USAF contract)	– –	x		AFLC (PMK) 1352 AVS/DO IN TURN
10	non-Federal Government agency (state, county, territorial, municipal)	x	– –	intended use of VI materials; type of film, video tape stock needed (neg, interneg, print, 3/4", 1", etc.); approx number of screen feet/minutes; a certification that requested material cannot be procured reasonably and expeditiously through normal business channels	SAF/PA, Wash DC 20332-6468
11	members of Congress	x	x	intended use of VI products; type of film/video stock needed (neg, interneg, print, 3/4", 1", etc.); approx number of screen feet; full justification for access to classified material (if applicable)	SAF/LL Wash DC 20332-6468
12	foreign governments, international organizations or their representatives	x	x		HQ USAF/CVAII or MAJCOM (if delegated authority)
13	foreign nationals or foreign industries (other than representatives of foreign governments or international organizations)	x	– –		ICA office serving the foreign country (see note)
14	same as 13	– –	x		HQ USAF/CVAII or MAJCOM (if delegated authority)
15	an Air Force activity	– –	x		MAJCOM Functional OPR coordinated with MAJCOM VI Manager 1352 AVS/DO IN TURN
16	other non-Air Force activities	– –	x	intended use of VI product; type of film stock/video tape needed (neg, interneg, print, 3/4", 1" tape, etc.); approx number of screen feet; full justification for access to classified material; a statement describing the measures to be taken—at least equal to those in DOD 5200.1R/AFR 205-1, to safeguard and protect the material against unauthorized disclosure	HQ USAF/SCV, Wash DC 20330-5190

Note: Requests originating within the United States may be sent to SAF/PA, Wash DC 20330-1000, for coordination with HQ USAF/CVAII and ICA clearance.

§ 811.10 Requests for still media.

RULE	A	B	C	D	E
		and material requested is			
	If the requester is	unclassified	classified	then furnish in writing the	and send the request to
1	news media	x	--		SAF/PA, Wash DC 20332-6468 for regional, national or international release; servicing PA for local release.
2	general public (including entertainment, documentary, advertisers, industrial media producers, editors, and writers)	x	--	story outline or ad copy; intended use of the material; type of material needed (print, neg, interneg, etc.); required number of prints, slides, etc.	SAF/PA, Wash DC 20332-6468
3	other DOD or Federal Government agency	x	--	intended use of material, type of material needed (print, neg, interneg, etc.), required number of prints, slides, etc., a full justification for access to classified material (if applicable)	DOD Still Media Records Center ATTN: Code SSRC Anacostia Naval Station Wash DC 20374-1681
4	Air Force activity	x	--		1361 AVS/DOSC, Andrews AFB DC 20331-5997
5	Federal Government contractor (to meet VI requirements specified in federal contract)	x	--		USAF plant representative
6	Federal Government contractor (to provide material for public release)	x	--		USAF plan representative
7	Air Force contractor (to meet VI requirements specified in a USAF contract)	--	x		USAF plant representative
8	USAF plant representative (to provide material to an Air Force contractor that is specified in a USAF contract)	--	x		AFLC/PMK, 1361 AVS/DOSC, Andrews AFB, DC 20331-5997 IN TURN
9	USAF plant representative (to provide material to a Federal Government contractor that is specified in a federal contract)	x	--		1361 AVS/DOSC, Andrews AFB, DC 20331-5997
10	USAF plant representative (to provide material to Federal Government contractor for release to public)	x	--		SAF/PA, 1361 AVS/DOSC, Andrews AFB, DC 20331-5997 IN TURN
11	non-Federal Government agency (state, country, territorial, municipal)	x	--	intended use of the material; type of material needed (neg, print, interneg, etc.); required number of prints, slides, etc; certification that requested material cannot be procured reasonably and expeditiously through ordinary business channels; full justification for access to classified material	SAF/PA, Wash DC 20332-6468
12	members of Congress	x	x		SAF/LL, Wash DC 20332-6468
13	foreign governments, international organizations or their representatives	x	x	intended use of the material; type of material needed (print, neg, interneg, etc.); required number of prints, slides, etc.; a full justification for access to classified material (if applicable)	HQ USAF/CVAII or MAJCOM (if delegated authority)
14	foreign nationals or foreign industries other than representatives of foreign governments or international organizations	x	--		ICA office serving the foreign country (see note), 1361 AVS/DOSC, Andrews AFB DC 20331-5997, IN TURN
15	same as 14	--	x		HQ USAF/CVAII or MAJCOM (if delegated authority)
16	Air Force activity	--	x		MAJCOM Functional OPR in conjunction with MAJCOM VI Manager, 1361 AVS/DOSC, IN TURN
17	non-Air Force activity	--	x	intended use of the material; type of material needed (neg, print, interneg, etc.); a full justification for access to classified material; a statement describing the measures taken to protect the material against unauthorized disclosure (must be at least equal to those in DOD 5200.1-R/AFR205-1)	HQ USAF/SCV, Wash DC 20330-5190

Note: Requests originating within the United States may be sent to SAF/PA, Wash DC 20332-6468 for coordination with HQ USAF/CVAII and PA clearance.

PART 811a—VISUAL INFORMATION DOCUMENTATION (VIDOC) PROGRAM

Sec.
811a.1 Purpose.
811a.2 Material sources for the VIDOC program.
811a.3 Disposition of VI documentation materials.

AUTHORITY: 10 U.S.C. 8013.

SOURCE: 52 FR 48681, Dec. 24, 1987, unless otherwise noted.

§ 811a.1 Purpose.

This part establishes policy for the management of the Air Force visual information documentation (VIDOC) program. It implements Department of Defense (DOD) Directive 5040.2 and describes how the program is accomplished. It applies to all Air Force personnel including United States Air Force Reserve and Air National Guard units and members. The term major command (MAJCOM), when used in this part includes separate operating agencies and direct reporting units. The Air Force VIDOC program:

(a) Records, through visual information (VI) means (still photographs, motion pictures, video, audio tape, and so forth), imagery of significant Air Force events that document the employment, growth, progress, and exercise of Air Force resources during peacetime and in combat.

(b) Collects and preserves visual imagery of significant Air Force events with known or potential historical or archival value.

(c) Ensures imagery which depicts the prime mission, support activities, and significant events of key Air Force organizations is available. VIDOC imagery or products are used for many purposes, at all levels, in the Air Force. Examples are:

(1) *Immediate use.* Documentation used to help analyze and evaluate concepts and results of deployments, contingencies, tests, exercises, and so forth, during peacetime and in combat to support Air Force, DOD, and national objectives. VIDOC provides source material for slides, motion picture clips, video tapes, multimedia products, and so forth; used for training, management, information, and briefing purposes. In wartime, products are used to support theater commanders psychological operations objectives, operational briefings, status reports, public affairs requirements, collateral intelligence, and the historical record.

(2) *Future use.* VIDOC materials with long-term or permanent value are retained in DOD central record centers, the National Air and Space Museum, and the National Archives. These make up the pictorial records of development, growth, and progress of air power and provide a continued resource for VI productions and other media presentations.

§ 811a.2 Material sources for the VIDOC program.

(a) The primary sources of VI documentation materials are:

(1) Aerospace Audiovisual Service (AAVS) documentation crews, both ground and aerial, whose primary mission is to acquire Air Force imagery in peacetime and in combat.

(2) Base VI support centers (VISC).

(3) Optical instrumentation and engineering imagery of Air Force research, development, test, and evaluation (RDT&E) projects, including that material originated by defense and aerospace contractors.

(4) Armament delivery recording (ADR) imagery.

(b) Although the imagery may not originate from a documentation requirement, when properly processed, indexed, and stored, it serves as a valuable source of VI documentation.

§ 811a.3 Disposition of VI documentation materials.

(a) VI materials generated or acquired by Air Force members, employees, or contractors in conducting official duties are the property of the United States Air Force. Personal use of VI material for sale or any other reason not directly related to an official Air Force activity is prohibited. Any deviation from this policy must be approved by HQ USAF/SCV. This policy also applies when Air Force members or employees, by choice or agreement, occasionally use personally owned equipment or supplies in conducting official duties.

(b) Photographs, motion picture films, transparencies, video tapes, audio recordings, and other VI products are subject to safeguards and release requirements when released outside the Department of Defense (see part 806 and part 837 of this chapter).

PART 812—USER CHARGES

Subpart A—General Information

Sec.

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AUTHORITY: Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

SOURCE: 49 FR 21527, May 22, 1984, unless otherwise noted.

NOTE: This part is derived from Air Force Regulation 117–8, 1 June 1983.

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.

Subpart A—General Information

§812.0 Purpose.

This part prescribes general policy for developing an equitable and uniform system of charges for special services and for selling or leasing property to persons or organizations outside DOD and outside the Federal Government; states the scope of user charges activities; furnishes guidelines and requirements for determining amounts of user charges, disposing of receipts, and accounting control of revenue from such charges. It implements DOD Instruction 7230.7, 15 August 1978, and DOD Instruction 7730.53, 23 December 1982. This part applies to all Air Force activities providing special benefits to non-DOD and non-Government recipients.

§812.1 Policy.

Air Force activities should not compete with available commercial facilities in providing special benefits or in selling or leasing property to recipients outside DOD or outside the Federal Government. However, impose a reasonable charge when authorized special benefits are provided that:

(a) Enable the recipient to obtain more immediate or substantial gain or values (which may or may not be measurable in monetary terms) than those accruing to the general public, or

(b) Are performed at the request of the recipient and are above and beyond the services regularly received by or available without charge to the general public.

§812.2 Responsibilities assigned.

Responsibility for initiating and developing schedules of charges and fees consistent with the policies in this part rests with:

(a) HQ USAF for common types of assistance furnished on a department-wide basis (these schedules are in Air Force functional area directives).

(b) Major commands for types of assistance peculiar to their respective commands.

(c) Each activity concern for items or types of assistance furnished for which standard fees are not prescribed by higher authority. Each activity:

(1) Identifies the benefits or services covered by this part.

(2) Determines the extent of the special benefits provided.

(3) Determines cost or fair market value.

(4) Establishes the charges.

§812.3 Non-user charge transactions.

The provisions of this part do not cover or apply to the areas listed below. This does not necessarily mean charges are not made in these areas but, if made, they are determined under the provisions of other Air Force directives and are not considered user charges. Charges for services furnished non-Government audiovisual media, for example, are made under AFR 190–16. Similarily, charges for Armed Forces participation in public events are governed by AFR 190–5, Field Press Censorship. Additional non-user charge areas include:

(a) Morale, welfare, and recreation services to military personnel and civilian employees.

(b) Sale or disposal of surplus property under approved programs.

(c) Services furnished the general public relating to or furthering the Air Force recruiting program.

(d) Any services furnished representatives of public information media or the general public in the interest of public understanding of the Air Force.

(e) Any records made available to the public under the Freedom of Information Act.

(f) Any requests for release of Air Force-developed computer programs to non-Government customers.

(g) Foreign military sales of materiel and services.

§ 812.4 Waived or reduced charges.

In general, charges may be waived or reduced when:

(a) Payment of the full cost or fee by a State or local government or by a nonprofit group would not be in the interest of the program. See subpart B for types of services and conditions under which services may be provided.

(b) Furnishing the service without charge is an appropriate courtesy to a foreign country or international organization, or comparable fees are set on a reciprocal basis with a foreign country.

(c) The incremental cost of collecting the fees would be an unduly large part of the receipts from the activity.

§ 812.5 User charge exclusions.

Although of a user charge nature, the following are considered exempt from the requirement to assess a charge. The list is not all-inclusive. Refer recommendations for additional exclusions to the office of primary responsibility (OPR) for this directive.

(a) Any services requested by members of the armed forces when the document or information requested is required by such personnel in their capacity as members of the armed forces of the United States.

(b) Any services requested by members of the armed forces who are in a casualty status, or by their next-of-kin or legal representative, and requests for information from any source relating to a casualty.

(c) The address of record of an active duty member or former member of the armed forces, when it can be furnished informally through local directory (locator) reference, when requested by a member of the armed forces, a relative, or legal representative of a member of the armed forces, or the address of record requested by any source, when the address is required for the purpose of paying monies or forwarding property to a member or former member of the armed forces.

(d) Any services requested by or on behalf of a member or former member of the armed forces or, if deceased, their next of kin or legal representative pertaining to requests for:

(1) Information required to obtain financial benefits regardless of the terms of separation from the service;

(2) Document showing membership and military record in the armed forces if discharged or release was under honorable conditions except as provided in § 812.5(d)(1) and (4);

(3) Information relating to a decoration or award or information required for memorialization purposes;

(4) Review or change in type of discharge or correction of records;

(5) Personal documents, for example, birth certificates, when such documents were required to be furnished by the individual.

(e) Services which are furnished free in accordance with statutes or executive orders.

(f) Information from or copies of medical and dental records and/or X-ray films of patients or former patients of military medical or dental facilities, when such information is required and requests for such data are submitted by an accredited medical facility, physician or dentist, or requested by the patient, next of kind, or legal representative.

(g) Any services involving confirmation of employment, disciplinary or other records, salaries of active or separated civilian or military personnel when requested by prospective employers, or recognized sources of inquiry for credit or financial purposes.

(h) Any services requested by and furnished to a member of Congress for official use.

(i) Any services requested by State, territorial, county, or municipal government, or an agency thereof, which

is carrying on a function related to or furthering an objective of DOD.

(j) Any services requested by a court when the furnishing of such will serve as a substitute for personal court appearance of a military or civilian employee of DOD.

(k) Any services requested by a nonprofit orgnization which is carrying on a function related to or furthering an objective of the Federal Government or in the interest of public health and welfare.

(l) Any services requested by an individual or corporation which is carrying on a function related to or furthering an objective of the Federal Government, when the cost of such services would be charageable directly to a Federal Government contract or grant held by the individual or corporation.

(m) Any services requested by donors with respect to their gifts.

(n) Requests for services which are occasional and incidental (including any request from a resident of a foreign country), of a type that is not requested often, if it is administratively determined that a fee would be inappopriate in such an occasional case.

(o) Any request from Federal employees for completion of forms applicable to claims for reimbursement in connection with the Federal Employees Health Benefit Act of 1959.

(p) Administrative services normally provided in reference or reading rooms for public inspection of records, except for copies of records or documents furnished.

(q) Any request for military locator service by a financial institution located on a DOD installation.

(r) Any request for military locator service from financial organizations, engaged in the composite check program, that are not located on a DOD Installation. Each request for an address of record must include:

(1) A statement that the organization is listed as a composite check recipient in the current U.S. Treasury Bureau of Accounts, Financial Organizations Directory.

(2) A statement that the individual whose address is requested has his or her pay forwarded as a direct deposit by DOD disbursing officer;

(3) The financial organization's account number for the individual.

(s) Any services rendered in response to requests for classification review of DOD classified records, submitted under Executive Order 11652, as implemented by DOD Regulation 5200.1–R, which consist of the work performed in conducting the classification review, or in granting and carrying to completion an appeal from a denial of declassification after such review.

(t) Any services of a humanitarian nature performed in certain emergency situations such as: life-saving transportation for non-US Armed Forces patients, search and rescue operations, and airlift of personnel and supplies to a site of disaster. This does not mean inter- and intra-Governmental agreements to recover all or part of costs should not be negotiated. Rather, it means the recipient or beneficiary is not assessed a user charge.

§812.6 Charges for special services.

(a) *Establishing Fees.* Establish user charge fees for special services on the basis of total costs or fair market value, whichever is higher, and not by the value of the services to the recipient. When applicable, determine fair market value in accordance with commercial rates in the local geographical area by referring to public pricing information, trade association information, market surveys, and other available information; do not conduct surveys solely for this purpose. Whenever feasible, establish and publish rates and fees in advance to facilitate uniformity of charges. Review rate and fee schedules annually or whenever significant changes in costs occur. Primary user charge rate and fee schedules are contained in 32 CFR part 813, Schedule of Fees for Copying, Certifying and Searching Records and Other Documentary Material, and 32 CFR part 811, Sale or Release of Audiovisual Documentation.

(b) *Determining Costs.* Determine or estimate costs from the best available records in the activity. Use existing cost systems; however, do not establish cost accounting systems solely to determine user charges. The following direct and indirect costs are included

within the definition and determination of total costs:

(1) Civilian salaries or wages and associated Air Force share of fringe expenses. Use predetermined rates in AFR 173–10, paragraph 2–33, as the basis for assessing charges.

(2) Military personnel costs and associated Air Force share of fringe expenses. The rates to be charged and the basis for charging DOD, non-DOD Federal, and non-Federal agencies are in AFR 177–101, General Accounting and Financial System at Base Level, chapter 33.

(3) Costs for materials, supplies, travel, communications, utilities, equipment and property rental, and maintenance of property and equipment.

(4) An asset use charge at 4 percent of direct costs to cover depreciation and interest on investment in DOD owned fixed assets.

(5) Costs of research, and of establishing standards and regulations when directly associated with the service performed.

(6) An administrative surcharge at 3 percent of total costs §812.6(b)(1) through (5) to cover general and administrative costs.

§ 812.7 Charges for lease or sale of property.

When Federally owned property or resources are leased or sold, assess a rental cost or sales price based on a determination of fair market value. Determine fair market value by applying sound business management principles in accordance with comparable commercial practices. Charges need not be limited to recovery of costs; they may produce net revenues to the Government.

(a) *Sale of Material.* In the absence of a known market value, determine the fair value for sale of material on the basis of an aggregate of the:

(1) Standard price of the item carried in inventory (or at a reduced price when so authorized for sale within DOD).

(2) Accessorial and administrative costs provide in AFR 172–5, Reimbursement for Accessorial and Administrative Costs.

(b) *Lease or Rental of Property.* Fair market value for lease or rental of property is normally determined according to commercial rates for similar property in the local geographical area.

(1) In cases involving lease or rental of military equipment, where there is no commercial counterpart, base fair market value on a computation of an annual rent made up of the sum of annual depreciation and interest on investment. Determine amount of interest on investment by applying a 10 percent interest factor to the net book value (acquisition cost plus additions less depreciation) of the asset. Add the cost of support, including general and administrative expenses, if support is furnished.

(2) In determining the fair market value of property to be leased, consider the degree lessee assumes risk of loss or damage to the property and holds the Government harmless against claims or liability by the lessee or third parties.

§ 812.8 Processing collections.

(a) Dispose of receipts per existing instructions.

(b) Normally, collect charges and fees in advance or at the time service is rendered. However, when multiple requests for services are received on a continuing basis from reliable requesters, services may be performed on an account receivable basis (that is, recording an account receivable when the service is provided, with subsequent billing of the organization requesting the service).

(c) Normally, deposit fees and charges collected to the appropriate receipt account. However, when authorized by law or Air Force directives, deposit fees and charges collected to the credit of the appropriation or fund responsible for the principle financial support of the services. Deposit collections in excess of recovery of full costs to the appropriate receipt account. Deposit collections for utilities and services in connection with the lease of property to the appropriation or fund responsible for financing the operations of the equipment and facility.

§ 812.9 Accounting and control.

(a) Activities providing special benefits or leasing and selling property

must make sure user charges imposed are in accordance with this directive. Request revisions, through appropriate OPR channels, when rate and fee schedules included in functional area regulations do not appear adequate in view of current experience. When charges are determined locally, give special attention to ensure compliance with this part.

(b) Activities generating user charge transactions furnish the accounting and finance office (AFO) all pertinent information necessary to voucher, collect, and otherwise account for each user charge being imposed. AFOs or their designees verify the accuracy and completeness of documentation supporting each user charge transaction. AFOs or designees also periodically review records, documentation, and procedures to ensure compliance with this part. An effective working relationship must be maintained between the AFO and activities generating user charge transactions.

§812.10 Conflicts or recommendations.

If this part conflicts with other parts or law, or otherwise appears to require modification, submit recommendations to AFAFC/XSGB, Denver CO 80279.

Subpart B—Specialized or Technical Services Provided to State and Local Government

§812.11 Air Force policy.

Air Force activities should cooperate fully with State and local units of government to provide any specialized or technical services authorized. Such services generally supplement but do not take the place of existing services. The Air Force will consider providing the services which are not reasonably and readily available through ordinary business channels.

§812.12 Explanation of terms.

For purposes of this part, DOD has provided these explanations:

(a) *State* means any State in the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State, but not the governments of the political subdivisions of a State.

(b) The terms *political subdivision* or *local government* means a local unit of government, including specifically a county, municipality, city, town, township, or a school or other special district created by or under State law, or combinations of any of these.

(c) *Specialized or technical services* means statistical and other studies and compilations, development projects, technical test and evaluations, technical information, training activities, surveys, reports, documents, and any other similar service functions which the Air Force is especially equipped and authorized by law to perform.

§812.13 Background.

Title III of the Intergovernmental Cooperation Act of 1968:

(a) Encourages intergovernmental cooperation in providing specialized or technical services to State and local governmental activities.

(b) Enables State and local governments to avoid unnecessary duplication of special service functions.

(c) Authorizes the Air Force to provide reimbursable specialized and technical services described in §812.4 under conditions detailed in §812.5 of this part.

§812.14 Types of services.

(a) Air Force activities may provide the following specialized or technical services and related facilities:

(1) *Specialized Services Required by Air Force.* Any existing statistical or other studies and compilations, results of technical tests and evaluations, technical information, surveys, reports, and documents, and any such materials which may be developed or prepared in the future to meet the needs of the Air Force or to carry out its normal program responsibilities. Examples: The testing of high octane gas, and studies involving sound repression made by the Air Force.

(2) *Specialized Services Similar to Those Required by Air Force.* Preparation of statistical or other studies and compilations, technical tests and evaluations, technical information, surveys, reports, and documents, and assistance in the conduct of such activities and in

the preparation of such materials, provided they are of a type similar to those which the Air Force is authorized by law to conduct or prepare. Example: Studies on airport construction, or technical information relating to testing of compounds used in runways.

(3) *Training.* Training of the type which the Air Force is authorized by law to conduct for its personnel and others or which is similar to such training. Example: Conducting special training for State and local government in areas such as aerial photography.

(4) *Technical Aid (Grant-in-Aid and Other).* Technical aid in the preparation of proposals for development and other projects for which the Air Force provides grants-in-aid or other assistance, provided such aid primarily strengthens the ability of the recipient to develop its own capacity to prepare proposals. This type of service is not applicable to Air Force at this time.

(5) *Technical Information Normally Available.* Technical information, data processing, communications and personnel management systems services, and technical advice on improving logistical and management services which the Air Force normally provides for itself or others. Example: Sale of a data processing program used by Air Force for blanket checks.

(b) Any of the above specialized or technical services provided to the States and their political subdivisions under existing authorities will also be provided under title III of the Intergovernmental Cooperation Act of 1968 and the terms of this part.

§ 812.15 Conditions under which services may be provided.

(a) Commanders of major commands or separate operating agencies of the Air Force are authorized to provide specialized or technical services only under the following conditions:

(1) If such services are provided either to State or local governments.

(2) Upon the written request of a State or local government. The chief executive of such entity normally should address the request to the Air Force commander involved.

(3) If the Air Force activity provides similar services for its own use. In addition, the requesting entity must certify that it cannot reasonably and expeditiously procure such services through ordinary business channels.

(4) If the Air Force will not incur additional expenses, including civilian and military personnel costs, solely for the purposes of providing such services, unless such costs are charged to the user.

(5) If the unit of government making the request fully reimburses or arranges to fully reimburse the Air Force for services, including payment of civilian/military salaries and all other identifiable direct and indirect costs involved.

(b) If a commander denies a request, he or she should state the reasons for the denial in writing to the entity making the request.

(c) Technical information provided under this instruction may not be further disseminated to third party governmental agencies, unless expressly authorized by the originating Air Force agency.

§ 812.16 Processing payments.

Deposit all monies received for specialized and technical services provided to the credit of the principal appropriation which has borne or will bear the cost of such services; for example, deposit to 57*3500 when military pay and allowances is the reimbursable element of cost.

§ 812.17 Questionable services.

(a) These services fall within two categories:

(1) Specialized or technical services not covered in § 812.14(a);

(2) Specialized or technical services requested when there is a doubt as to whether the service is covered by § 812.14(a).

(b) If a commander receives a request for a service described in § 812.17(a), and his activity has a special competence to provide it, he should forward the request to AFAFC/XSGB, Denver, CO 80279.

(c) The request will be reviewed and evaluated by AFAFC/XSGB before forwarding it through OASD (Comptroller), Wash DC 20301, to the Office of Management and Budget for action. Appropriate contact with applicable

Air Staff offices will be made by AFAFC/XSGB during evaluation of each request.

PART 818—PERSONAL FINANCIAL RESPONSIBILITY

Subpart A—General

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818.21 Statutory allotments.

AUTHORITY: 10 U.S.C. 8013, 15 U.S.C. 1673, 42 U.S.C. 659, 661, 662, 665.

SOURCE: 53 FR 24689, June 30, 1988, unless otherwise noted.

NOTE: This part is derived from Air Force Regulation 35–18.

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.

Part 807 of this chapter states the procedures for issuing publications and forms to the public.

Subpart A—General

§818.0 Purpose.

This part establishes Air Force policy governing alleged delinquent financial obligations. It outlines procedures for processing claims of this nature. It implements 32 CFR parts 43, 43a and 81. It applies to all active Air Force installations and members and US Air Force Reserve (USAFR) units and members. This part does not apply to Air National Guard (ANG) units and members. This part is affected by the Privacy Act of 1974. System of Records Notice F030MPCB—Indebtedness, Nonsupport, Paternity, applies.

§818.1 Air Force policy.

Air Force members are expected to pay their financial obligations in a proper and timely manner. For the purpose of this part, financial obligations are divided into two categories: Personal indebtedness, and dependent support. As a general rule, the Air Force has no legal authority to require its members or their family members to pay personal financial obligations. Enforcement is a matter for civil authorities. However, the Air Force can, under certain conditions, divert part of a member's pay for debts owed to the United States or any of its instrumentalities (see §818.11) or to satisfy delinquent child support and alimony payments (see §§818.15 and 818.16). Administrative or disciplinary action may be taken against Air Force members in cases of continued financial irresponsibility. Such action is taken to improve discipline and maintain the standards of conduct expected of Air Force personnel, but cannot be used to enforce private civil obligations.

§818.2 Explanation of terms.

(a) *A proper and timely manner.* A manner which, under the circumstances, does not discredit the Air Force.

(b) *Financial obligation.* A legal obligation acknowledged by the member in which there is no reasonable dispute as to the facts, or one reduced to judgment. The judgment must conform to the Soldiers' and Sailors' Civil Relief

Act of 1940, as amended (50 U.S.C. app. 501, (1970)), if applicable.

(c) *Claimant or complainant.* Any business or person seeking help in obtaining settlement of an alleged financial obligation or making a claim of delinquency concerning such matters.

(d) *Creditor.* Any person or business that extends or offers credit, or to whom or to which a debt is owed. This term includes lending institutions (such as centralized charge systems) which, although not a party to the original transaction, seek help in obtaining settlement.

(e) *Debt collector.* Any person or agency whose business is primarily the collection of debts owed to another person or business.

(f) *Dependent.* Spouse and unmarried children—includes stepchildren, adopted children, and illegitimate children dependent on the military member. It may include others duly constituted (see DOD Military Pay and Allowances Entitlements Manual and AFR 30–20, Issue and control of Identification (ID) Cards).

§ 818.3 Responsibilities.

Specific responsibilities for ensuring Air Force standards are met:

(a) Major commands (MAJCOM), separate operating agencies (SOA), and direct reporting units (DRU) monitor and provide guidance to subordinate units, as required, to ensure compliance with established procedures.

(b) Initial active duty indoctrination sites ensure that a comprehensive block of instruction on personal financial management is included in teaching guides or course curriculums, as appropriate. This instruction should emphasize the Air Force policy regarding personal indebtedness and dependent support (§ 818.1) and the merits and benefits of the PFMP and the BRP. (See § 818.5(b)(2) (i) and (ii).

(c) Installation commanders:

(1) Develop appropriate guidance to assure compliance with prescribed procedures.

(2) Coordinate on all responses to high-level, executive, and congressional inquiries.

(d) Chiefs, CBPO:

(1) Through the CBPO Special Actions Unit, process all complaints according to this part.

(2) Upon request, provide UIF policy guidance to the unit commander.

(3) Coordinate on all responses to high level, executive, and congressional inquiries.

(e) Unit commanders:

(1) Implement required procedures at the unit level.

(2) Review all the available facts surrounding a complaint of personal indebtedness, or of nonsupport or inadequate support of dependents, and initiate appropriate action.

(3) Ensure complainants are provided a prompt reply that explains Air Force policy. At the unit commander's discretion, the first sergeant may respond to initial complaints. Second and subsequent inquiries require a reply by the unit commander.

(4) Advise members of the requirement to meet their financial and dependent support obligations and inform them that failure to do so damages their reputation and affects the public image of all Air Force personnel. At the unit commander's discretion the first sergeant may provide initial counseling to enlisted members. Second and subsequent inquiries require counseling by the unit commander.

(5) Refer personnel who have evidenced financial irresponsibility to the local PFMP manager for counseling on a mandatory but confidential basis.

(6) Coordinate on all responses to high-level, executive, and congressional inquiries that pertain to personnel assigned to the unit.

(7) Consider administrative or disciplinary action against members in cases of continued financial irresponsibility, fraud, deceit, criminal conduct, or failure to support dependents. Consult the staff judge advocate for guidance.

(f) Air Force members:

(1) Are expected to pay their just financial obligations in a proper and timely manner.

(2) Are expected to provide regular and adequate support to their dependents.

(3) Maintain reasonable contact with their creditors and dependents to minimize Air Force involvement.

(g) PFMP managers:

(1) Establish a consultant function to assist personnel in financial management matters, or other subjects as deemed appropriate to the needs of the local base population.

(2) Advise commanders regarding Air Force policy.

(h) Staff judge advocates:

(1) Advise commanders on the application of Air Force policy on individual cases. Include advice on administrative or disciplinary action that may be appropriate in cases involving continued financial irresponsibility, fraud, deceit, criminal conduct, or failure to support dependents, including arrearages.

(2) Provide guidance concerning federal, state, and local laws (e.g., bankruptcy, garnishment, wage earner plans, the Truth in Lending Act (Pub. L. 90–321), Fair Debt Collection Practices Act (Pub. L. 95–109), The Soldiers' and Sailors' Civil Relief Act of 1940, as amended, etc.).

(3) Coordinate on all responses to high-level, executive, and congressional inquiries.

(i) Family support centers serve as a source of information, counseling, and referral for family members in need of support and financial management assistance.

§818.4 Review of complaints.

Complaints received regarding personal indebtedness or nonsupport of dependents should first be forwarded to the consolidated base personnel office (CBPO) Special Actions Unit to ensure that they pertain to an Air Force member. Also, indebtedness complaints should be reviewed by the staff judge advocate's office to ensure that they meet the general policies and requirements for acceptance (see §§818.7 and 818.8).

(a) The CBPO Special Actions Unit forwards processable cases to the unit commander for action, or:

(1) If the member has been reassigned, forwards the case to the current CBPO Special Actions Unit and advises the complainant of referral.

(2) If member has separated with no further military status or has retired, advises the complainant accordingly and indicates they are unable to assist because the individual is no longer under Air Force jurisdiction.

(3) If the member has been released from active duty, forwards the case to Headquarters Air Reserve Personnel Center, Special Actions Branch (HQ ARPC/DPAS), Denver CO 80280–5000, and advises the complainant of the referral.

(b) Indebtedness complaints that do not meet processing requirements are returned to the complainant with an explanation of the reason or reasons for return.

(c) For dependent nonsupport or inadequate support cases forwarded by HQ AFMPC/DPMASC, the commander must furnish the following information in the reply to that office (if negative, so state):

(1) Requirement of court order or decree, if applicable, and degree of compliance by the member.

(2) Date, amount, and method of prior support payments.

(3) Proposed date, amount, and method (for instance, money order, personal check, allotment, and, if by allotment, the effective date of first payroll deduction, and so forth) of future support payments (primary and arrearages, if any).

(4) If drawing basic allowance for quarters (BAQ), the amount received, type (for instance, with dependents or without dependents), and basis for receipt (wife, child or children in custody of ex-wife, and so forth).

(5) Action taken or projected to be taken to comply with §818.14, where appropriate, regarding the BAQ.

§818.5 Processing of complaints.

Any complaint that meets the requirements of this part will be processed. Processed means that the commander shall, within 15 calendar days of receipt of a complaint:

(a) Review all available facts surrounding the transaction or forming the basis for the complaint, including the member's legal rights and counterclaims. Assess the actions of the member as they apply to Air Force policy in these situations by reviewing the requirements of the credit agreement, court order, separation agreement, or other documents and actions taken by

the member to resolve the matter, and the financial status of the member.

(b) Advise the member of Air Force policy appropriate to the complaint—that personal debts are expected to be paid in a proper and timely manner or that Air Force members are expected to provide regular and adequate support for their dependents. Also, explain what the member should do to comply with that policy.

(1) Legal counseling services are available regarding indebtedness and dependent support agreements.

(2) Financial counseling and assistance services are available through the Personal Financial Management Program (PFMP) or the Budget Restructuring Program (BRP).

(i) PFMP is designed to assist personnel in analyzing personal financial problem areas, developing budgets, formulating debt-liquidation plans, obtaining consumer protection, improving checkbook maintenance, and buying on credit. (See AFR 170–32, Personal Financial Management Program (PFMP))

(ii) BRP is a coordinated approach between the PFMP manager, Headquarters Air Force Aid Society (AFAS) and the installation commander, whereby members who are undergoing financial difficulties may obtain a loan. BRP loans are made to deserving members in selected cases where long-term debt problems are such that budget restructuring is essential if the member is to function effectively in the Air Force environment.

(iii) Counseling services may also be available from the onbase military banking facility or credit union.

(c) Advise the complainant of Air Force policy that applies to the situation. Responses to dependent support complaints will include, when appropriate, a copy of the factsheet describing the legal process procedures that may be taken against the Air Force (§ 818.20 and 818.21). Form letters are not permitted.

(1) The Air Force does not arbitrate disputed cases, admit or deny validity of the complaint, or confirm the liability of its members.

(2) Under no circumstances will the response indicate whether or not administrative or disciplinary action has been taken against the member as a result of the complaint.

(3) Replies should be courteous and responsive to the complaint. The commander is not an intermediary and that impression should not be given in the reply.

(4) Commanders must actively monitor complaints until they are resolved. The Air Force cannot tolerate financial irresponsibility, neglect, dishonesty, or evasiveness. Failure to liquidate personal financial obligations promptly and honorably or to provide regular and adequate financial support to dependents could necessitate administrative or disciplinary action. If the commander decides the complaint reflects adversely on the member, the administrative or disciplinary action should be made a part of the unfavorable information file (UIF) according to AFR 35–32 (Unfavorable Information Files, Control Rosters, Administrative Reprimands and Admonitions) or the unit assigned personnel information file (UAPIF) according to AFR 35–44 (Military Personnel Records Systems).

§ 818.6 High-level inquiries (AFR 11–7, Air Force Relations with Congress).

Replies to high-level, executive, and congressional inquiries should be coordinated through the installation commander, the staff judge advocate, director of personnel, and inspector general. As a minimum, replies should state Air Force policy (§ 818.1), and a summary of the position taken by the member, if applicable. For inquiries requiring response to HQ AFMPC Congressional Inquiries Section (DPMRPH2), include that information required by § 818.4(c), as appropriate, in addition to:

(a) Whether or not the member agrees to release of information protected by the Privacy Act of 1974. (See part 806b of this chapter)

(b) Name of unit commander, address, and base telephone number.

Subpart B—Personal Indebtedness

§ 818.7 General policies.

(a) Members are expected to pay their financial obligations in a proper and timely manner. Claims of indebtedness, including returned checks, if

properly supported, are processed as prescribed in §818.5.

(b) Inform claimants, desiring to contact a military member about indebtedness, that they may obtain the member's military address by writing to the HQ AFMPC Research, Locator Fees Section (HQ AFMPC/DPMD003), Northeast Office Place, 9504 IH 35 North, San Antonio TX 78233–6636. Usually, a research fee of $3.50 is charged for this service. For those cases where an address is not releasable, HQ AFMPC/DPMD003 provides mail forwarding service at no additional cost.

(c) The processing of complaints will not be extended to those:

(1) Who have not made a bona fide effort to collect the debt directly from the military member through personal contact, correspondence, or other means.

(2) Whose claims are patently false and misleading, or are in violation of state laws concerning usury and debt collection practices (§818.4).

(3) Whose claims are obviously exorbitant (§818.4).

(d) Some states have enacted laws that prohibit creditors from contacting a debtor's employer with respect to indebtedness or communicating facts concerning indebtedness to any employer unless certain conditions are met. The conditions that must be met to remove this prohibition are generally such things as reduction of a debt to judgment and obtaining written permission of the debtor.

(1) At Air Force installations in states having such laws, the processing of debt complaints will not be extended to those creditors who are not in compliance with the state law. Commanders may advise creditors that this rule has been established because it is the general policy of the Air Force to comply with state law when that law does not infringe upon military interests.

(2) This policy will govern even though the creditor is not licensed to do business in the state where the debtor is located.

(e) Under Pub. L. 95–109, contact by a debt collector with third parties for the purpose of aiding debt collection is prohibited without the prior consent of the debtor, given directly to the debt collector, or without a court order. Creditors are generally exempt from Pub. L. 95–109 when they collect on their own behalf.

(f) Denial of privileges:

(1) If a claimant, having been notified of the requirements of this part, refuses or repeatedly fails to comply with its provisions; or a claimant, regardless of the merits of the claim, clearly has shown that an attempt is being made to make unreasonable use of the processing privilege, the CBPO Special Actions Unit documents the case, provides comments and recommendations, and submits the documentation through command channels to HQ AFMPC/DPMASC.

(2) Cases involving usurious, fraudulent, misleading, or deceptive business practices are reported to the Armed Forces Disciplinary Control Board according to AFR 125–11 (Armed Forces Disciplinary Control Boards and Off-Installation Military Enforcement Services), as well as HQ AFMPC/DPMASC if it appears that Air Force-wide action is appropriate.

§818.8 General requirements for acceptance of complaints.

Requirements in this section do not apply to claims by Federal, State, or Municipal governments, including foreign, nor to those creditors not otherwise subject to Federal Reserve Board (FRB) Regulation Z (12 CFR part 226, §§226.3, 226.9 (1978)).

(a) *Full disclosure and standards of fairness.* The Truth in Lending Act (Pub. L. 90–321) prescribes the general disclosure requirements that must be met by those offering or extending consumer credit. It also prescribes the specific disclosure requirements for both open-end and installment credit transactions.

(1) In place of government requirements, state regulations apply to credit transactions if the FRB determines that the state regulations impose substantially similar requirements and provide adequate enforcement measures.

(2) Commanders should seek advice from their local staff judge advocate to determine whether federal or state laws and regulations apply.

(b) *Certificates of compliance:* (1) Creditors subject to FRB regulation Z, and

assignees claiming thereunder, must provide an executed copy of the Certificate of Compliance with their request for assistance. They must also include a copy of the general and specific disclosures provided the member as required by Pub. L. 90–321.

(2) Creditors not subject to FRB Regulation Z (for example, public utility companies, grocery stores, and so forth) must include a certification that their request contains neither interest, finance charges, nor other fees in excess of that permitted by the laws of the state in which the obligation was incurred.

(3) Foreign-owned companies having debt complaints against a member must provide a true copy of the terms of the debt, translated into English, and certification of their subscription to the Standards of Fairness.

(c) *Evidence of prior actions.* Such evidence should include photostatic, file, or other duplicated copies, or documentary proof (for example, chronological account activity listings, notarized personal statements, postal documentation, and so forth) showing that every effort has been made to obtain payment by direct contact with the member.

§ 818.9 Dishonored checks and similar instruments.

Every check, draft, or order for the payment of money drawn on any bank or other depository carries with it the representation of payment in full when presented. If dishonored, checks and similar instruments are considered to be evidence of personal indebtedness until redeemed or the member asserts a valid defense to payment. The procedures in §818.5 apply, and commanders should counsel members on Air Force policy regarding personal indebtedness. Although redeemed:

(a) Administrative or disciplinary action may be appropriate where criminal conduct is evident. The commander should consult the staff judge advocate to determine whether action under the Uniform Code of Military Justice (UCMJ) or other administrative action is appropriate.

(b) Repeated cases of dishonored checks may serve as the basis for administrative action, to include letters of reprimand, UIF entries, overstamping identification cards to reflect the denial of check cashing privileges (AFR 30–20, Issue and Control of Identification (ID) Cards), or administrative separation. The commander should consult the staff judge advocate on the appropriateness of administrative action.

NOTE: These provisions are not appropriate for dishonored checks issued by a military dependent unless the staff judge advocate determines that the member may be held personally liable based on a review of the circumstances.

§ 818.10 Bankruptcy.

Air Force policy is one of strict neutrality. No adverse action may be taken against a member of the Air Force for either filing a petition or because of a discharge in bankruptcy. Underlying facts may involve mismanagement of personal affairs or dishonorable failure to pay just debts and could form a basis for adverse action against a member of the Air Force, but neither filing a petition (for bankruptcy or for payments out of future earnings) nor a discharge in bankruptcy can, of themselves, be considered ''mismanagement'' or ''dishonorable.''

(a) Commanders should consult with the servicing staff judge advocate before considering any administrative or disciplinary action against a member for conduct associated with a bankruptcy petition.

(b) Further, the staff judge advocate should be consulted when providing financial counseling for members considering bankruptcy.

(c) The Air Force recognizes and complies with decrees in bankruptcy cases.

§ 818.11 Involuntary deductions for personal indebtedness.

Federal law (5 U.S.C. 5514 and 37 U.S.C. 1007(c)) authorizes the Air Force Accounting and Finance Center (AFAFC) to satisfy a military member's personal indebtedness to the Air Force and other Department of Defense (DOD) Components, federal agencies, and nonappropriated funds instrumentalities by involuntary salary offset or administrative offset (AFR 170–30, Debt Collecting). In addition, the AFAFC is authorized to garnish the wages of Air

Force members to satisfy personal indebtedness for the enforcement of child support and alimony payments under certain conditions (§§818.15 and 818.16).

Subpart C—Dependent Support

§818.12 General policies.

Members are expected to pay their financial obligations in a proper and timely manner. Dependent support, direct or in-kind, is a primary element of an individual's personal financial obligations. Failure to provide adequate dependent support, including the failure to make up arrears in support, is the proper subject of command consideration for disciplinary or administrative action.

(a) Air Force members are expected to comply with the financial support provisions of a court order or written support agreement. If the validity of either is questioned by the member, the issue must be resolved by the parties or through the civil courts. The Air Force does not arbitrate such disputes. Written agreements include such things as separation agreements, property settlement agreements, and correspondence in which the amount of support has been agreed to by the parties concerned.

(b) Air Force members are expected to provide adequate support for dependents in the absence of a court order or written support agreement. The amount of support is generally based on the dependent's needs (for example, food, clothing, shelter, medical care, and so forth) and the ability of the member to pay. Each Air Force member is expected to provide support in an amount, or kind, bearing a reasonable relation to the needs of the dependents and the ability of the member to meet those needs.

(1) The Air Force has no legal authority to arbitrate the amount of support to be provided or to unilaterally deduct money from a member's pay to ensure dependent support.

(2) Commanders must assess the actions of the member with respect to their ability to pay and compliance with Air Force policy.

(i) For example, an individual who purchases a new car for personal use and then claims an inability to provide dependent support because of financial constraints ordinarily would not be viewed as being in compliance with Air Force policy.

(ii) Further, an individual who acknowledges an existing obligation and initiates an allotment for future support but does not provide for past periods of nonsupport ordinarily would not be viewed as being in compliance with Air Force policy.

(3) Commanders must assess the member's compliance with Air Force policy when a family is separated either by choice or due to an assignment action (for example, member volunteers for a dependent-restricted overseas area, elects to serve an unaccompanied tour, early returns dependents from an overseas area, is absent as a result of lengthy temporary duty, and so forth).

(c) Examples of in-kind support includes such things as making the mortgage or rent payments on a home occupied by the dependents, making the payments on an automobile being used by the dependents, paying medical bills, paying for school tuition, and so forth.

(d) Dependents, including ex-spouses on behalf of a member's dependent child or children, are entitled to military legal counseling services and are encouraged to seek such advice when needed.

(e) The member's obligation to support a child or children is not affected by desertion or other misconduct on the part of the spouse or ex-spouse.

(f) Members are expected to initiate changes of address for support allotments and process appropriate applications for issue or renewal of dependent identification cards in a timely manner when requested to do so by or on behalf of dependents.

§818.13 Proof of support.

Generally, proof of dependent support is not required. However, on receipt of a complaint of nonsupport or inadequate support from, or on behalf of, a dependent for whom the member is receiving basic allowance for quarters (BAQ), proof of support is required.

§ 818.14 Basic Allowance for Quarters (BAQ).

Under the DOD Military Pay and Allowances Entitlements Manual (DODPM), paragraph 30236, BAQ is not payable on behalf of a dependent whom a member refuses to support. Failure to support a dependent on whose behalf BAQ is being received requires recoupment for periods of nonsupport. Members should be informed of this provision and be advised that refusal or failure to support dependents requires administrative termination of BAQ entitlement at the with dependents rate.

(a) BAQ termination at the with dependents rate does not relieve a member of responsibility for providing dependent support.

(b) Commanders must assess the member's compliance with Air Force policy in those situations where the member would not otherwise be authorized the BAQ entitlement. For example, member is residing in government quarters and has no other dependents.

§ 818.15 Garnishment.

Federal law authorizes legal process against the Air Force only for the enforcement of child support and alimony payments according to state law. Service of legal process must be accomplished by certified or registered mail, return receipt requested, or by personal service. The Commander, Air Force Accounting and Finance Center, Attention: JA, Denver CO 80279–5000, telephone (303) 370–7524, is the agent designated to accept legal process within the Air Force for active duty, Reserve, and retired military members.

(a) Legal process is defined as any writ, order, summons, or other similar process in the nature of garnishment issued by:

(1) A court of competent jurisdiction within any state, territory, or possession of the United States; or

(2) A court of competent jurisdiction in any foreign country with which the United States has entered into an agreement that requires the United States to honor such process; or

(3) An authorized official pursuant to an order of such court of competent jurisdiction or pursuant to state or local law. (See 42 U.S.C. 659, 662.)

(b) Process directed for garnishment must demonstrate, either on its face or by accompanying documentation, that collection is sought only for child support or alimony or both. The process must also show the member's Social Security number and whether the member is active duty, Reserve, or retired.

(c) If the validity of a court's order is questioned by the member concerned, the issue must be resolved by the parties or in court by the member or his or her private attorney. The Air Force has no authority to resolve such disputes.

§ 818.16 Statutory allotments.

An active duty member's pay and allowances are subject to a mandatory allotment to satisfy child or child and spousal support obligations where payments are in arrears for at least 2 months.

(a) A statutory allotment, pursuant to federal law, may be accomplished by the Air Force Accounting and Finance Center upon their being furnished a written notice from a court or state agency with responsibility for administering child support programs under title IV–D of the Social Security Act.

(b) The notice and the following documents or information must be served on the Commander, Air Force Accounting and Finance Center, Attention: JA, Denver CO 80279–5000:

(1) A statement that the person signing is an agent or an attorney of the state having a title IV–D plan who has the duty or authority under such plan to seek to recover amounts owed by a member as child or child and spousal support or a notice from a state court or any agent of the court who has authority to issue an order against a member for the support of a child.

(2) The service member's full name and Social Security number.

(3) A recently certified copy of the order awarding support must be included with the notice and a statement that the support payments are in arrears at least 2 months.

(4) A court order showing the amount of the arrears and specifying that payments be made to liquidate such arrears.

(5) The total amount of the allotment (the amount to be paid for current support and the amount to be paid each month towards arrears must be specified), the date or dates that the current support should terminate (for each child), and the name and address of the payee.

§818.17 Paternity claims.

The Air Force does not judge paternity claims against its personnel. Paternity must be established either by admission, or by judicial order or decree of paternity, or child support duly ordered by a United States or foreign court of competent jurisdiction.

(a) Allegations of paternity against active duty members will be transmitted to the member concerned through his unit commander. The unit commander will:

(1) If paternity is denied, inform the claimant accordingly and advise of Air Force policy regarding paternity claims.

(2) Once paternity is established, advise the member of his moral and legal obligations as well as his legal rights in the matter. The member will be encouraged to render the necessary financial support to the child and take any other action considered proper under the circumstances. Advise the claimant of Air Force policy as it relates to support of dependents and the position taken by the member, if the member elects to take one.

(3) On receipt of a communication from a judge of a civilian court, including a court summons or a judicial order, concerning the member's availability to appear at an adoption hearing where it is alleged that he is the father of an illegitimate child, provide a reply that:

(i) Due to military requirements, the member cannot be granted leave to attend any court hearing until (date), or

(ii) A request by the member for leave to attend an adoption hearing on *(date)*, if made, would be approved, or

(iii) The member has stated in a sworn written statement (forward a copy with response) that he is not the natural parent of the child, and that only a court of competent jurisdiction can judge the matter, or

(iv) Due to the member's unavailability caused by a specific reason, a completely responsive answer cannot be made.

(v) Inform member of the inquiry and the response. Also, member should be urged to obtain legal assistance (including an explanation of the Soldiers' and Sailors' Civil Relief Act of 1940, if appropriate).

(b) If the member has been released from active duty, the unit commander forwards the inquiry to HQ ARPC/DPAS, Denver CO 80280–5000. Advise complainant of the referral.

(1) HQ ARPC/DPAS, on receipt of an allegation of paternity, provides an appropriate response to the claimant as set forth for members on active duty under paragraphs (a) (1) and (2) of this section.

(2) Communications from a judge of a civilian court, including a court summons or judicial order, concerning the availability of personnel to appear at an adoption hearing where it is alleged that the member not on active duty is the father of an illegitimate child, shall receive a reply that such person is not on active duty. A copy of the communication and the reply is forwarded to the named individual.

(3) When requested by a judge of a civilian court, the member's address may be furnished if the request is supported by a:

(i) Certified copy of either a judicial order or decree of paternity or support duly rendered against the member by a United States or foreign court of competent jurisdiction; or

(ii) Document that establishes that the member has made an official admission or statement acknowledging paternity or responsibility for support of a child before a court of competent jurisdiction, administrative or executive agency, or official authorized to receive it; or

(iii) Court summons, judicial order, or similar document of a court within the United States in a case concerning the adoption of an illegitimate child wherein the member is alleged to be the father.

(4) The address may also be furnished if the claimant, with the corroboration of a physician's affidavit, alleges and explains an unusual medical situation

that makes it essential to obtain information from the alleged father to protect the physical health of either the prospective mother or the unborn child.

(c) If the member has been separated with no further military status or retired, the unit commander advises the claimant:

(1) Of the date of discharge. Indicate that you are unable to assist because the individual is no longer under Air Force jurisdiction. Also, advise that the Air Force assumes no responsibility for the whereabouts of individuals no longer under its jurisdiction.

(2) In addition, the last known address of the former member may be furnished the requester under the same conditions as set forth for members not on active duty under paragraph (b) of this section.

§ 818.18 Certificate of compliance.

See 32 CFR part 43a.10.

§ 818.19 Standards of fairness.

See 32 CFR part 43a.9.

§ 818.20 Garnishment of pay of Air Force members and employees only for child support or alimony obligations.

(a) This section is for general guidance. For more specific information, refer to the United States Code (42 U.S.C. 659, 661, 662; 15 U.S.C. 1673), the Code of Federal Regulations (5 CFR part 581), and applicable State law.

(b) Federal law authorizes legal process against the United States Air Force only for the enforcement of child support and alimony obligations of members and employees in accordance with State law. This includes active duty, Reserve, Air National Guard (ANG), and retired military members, and civilian employees of the United States Air Force. See 42 U.S.C. 659.

(c) Legal process is defied as any writ, order, summons, or other similar process in the nature of garnishment directed to the US Air Force which is issued by:

(1) A court of competent jurisdiction within any State, territory, or possession of the United States;

(2) A court of competent jurisdiction in any foreign country with which the United States has entered into an agreement that requires the United States to honor such process; or

(3) An authorized official pursuant to an order of such court of competent jurisdiction or pursuant to State or local law. See 42 U.S.C. 659, 662.

(d) Child support is the legal obligation of an individual to provide periodic payments of funds for the support and maintenance of a child, subject to, and in accordance with, State law.

(e) Alimony is defined as the obligation of an individual to provide periodic payments for the support and maintenance of the spouse (or former spouse) including separate maintenance, alimony pendente lite, maintenance, and spousal support. The definition of alimony expressly excludes payments or transfers of property made in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses. See 42 U.S.C. 662 (b) and (c).

(f) Attorney's fees, interest, and court costs are within the definition of child support and alimony when, and to the extent, they are recoverable pursuant to a decree, order, or judgment issued in accordance with applicable State law by a court of competent jurisdiction.

(g) State law is to be followed when processing garnishment requests (as to jurisdiction and competency of courts, procedures, exemptions, and the operation of garnishment or similar process). However, State law as it applies to service of process and exemptions from garnishment and similar process may be affected by Federal law. See 42 U.S.C. 659(b) and 15 U.S.C. 1673(b).

(h) Unless an otherwise lesser amount is specified by State law, Federal law provides a limit of 50 percent on the amount that is subject to garnishment for a person supporting a second family (a spouse or dependent child), and 60 percent for a person who is not. The percentages are increased by an additional 5 percent in each situation if there are outstanding arrearages more than 12 weeks old.

(i) A Federal employee's pay subject to garnishment includes wages, salary bonuses, incentive pay, retired pay, or disability retirement pay. (The United

States will exclude debts owed to the United States; Federal, State and local income tax withholding; Social Security withholdings (FICA); deductions for health insurance premiums; normal retirement contributions; normal government life insurance premiums; fines and forfeitures ordered by court-martial; Retired Serviceman's Family Protection Plan; and Survivor Benefit Plan.) See 42 U.S.C. 662(g) and 5 CFR 581.105.

(j) Process directed to the Commander, AFAFC/JA, must demonstrate, either on its face or by accompanying documentation, that collection is sought only for child support or alimony or both. The process must also show the social security number and whether the member is retired, Reserve, ANG, active duty, or civilian employee. (If the employee is a civilian, the name of the base where the civilian is employed should also be provided.)

(k) In order to process the request efficiently, these documents should be provided:

(1) If the process does not reflect that it has been brought to enforce an obligation of support, a certified copy of the order, judgment, or decree that originally established the obligation to support (5 CFR 581.202(c));

(2) A copy of any pleading requesting reduction of delinquent amounts to a judgment amount, and a copy of any order resulting therefrom;

(3) Any pleading, affidavit, or application requesting garnishment process; and

(4) The supporting execution, if any.

Documentation will vary depending on State law.

(l) The law directs the Federal government to answer garnishment or similar process within 30 days (or within such longer period as may be prescribed by applicable State law) after date of service. See 42 U.S.C. 659(d).

(m) Service of legal process must be accomplished by certified or registered mail, return receipt requested, or by personal service. Any documents served in any other manner will be returned without action. The following agents have been designated to accept legal process within the Air Force:

(1) Active duty, reserve, Air National Guard (ANG), and retired military members, and civilian employees of appropriated fund activities: Commander, Air Force Accounting and Finance Center, Attention: JA, Denver CO 80279–5000; (303) 370–7524.

(2) Nonappropriated fund civilian employees of base exchanges: Army and Air Force Exchange Service, Attention: GC–G, Dallas TX 75222–3956; (214) 320–2641.

(3) Civilian employees of all other Air Force nonappropriated fund activities: AFMPC/JA, Attention: NAF Law Division, Randolph AFB TX 78150–6001; (512) 652–6691.

(n) See 5 CFR part 581, appendix A.

§818.21 Statutory allotments.

(a) On 3 September 1982, the President signed into law section 172(a) of Pub. L. 97–248 (codified at 42 U.S.C. 665, effective 1 October 1982) which allows mandatory allotments from an active duty member's pay and allowances to satisfy child or child and spousal support obligations. (Alimony or spousal support alone does not qualify under this law).

(b) A spouse or former spouse may obtain an allotment for child support or child and spousal support in cases where payments are in arrears for at least 2 months.

(c) This act provides that no more than 50 percent of a member's pay and allowances are subject to be allotted from a member who is supporting a second family and no more than 60 percent from a member who is not. The percentages are increased by 5 percent in each situation where there are outstanding arrearages which are 12 or more weeks past due. Pay and allowances and exclusions are defined in the DOD regulations.

(d) After the Air Force member is notified and given an opportunity to be counseled, the allotment will be established in the next available month following 30 days after notice is made on the Air Force member. The payments will be made at the end of the month in which the allotment was established.

(e) An allotment, pursuant to this statute, may be accomplished by furnishing the Air Force Accounting and Finance Center a written notice from a

court or state agency administering child support programs under title IV–D of the Social Security Act. This notice must be signed and must contain the following information:

(1) A statement that the person signing is an agent or an attorney of the State having a IV–D plan who has the duty or authority under such plan to seek to recover amounts owed by a service member as child or child and spousal support or a notice from a state court or any agent of the court which has authority to issue an order against a service member for the support of a child.

(2) The service member's full name and social security number.

(3) A recently certified copy of the order awarding support must be included with the notice.

(4) A statement that the support payments are in arrears at least two months.

(5) A court order showing the amount of the arrears and specifying that payments be made to liquidate such arrears.

(6) The total amount of the allotment. (Specify the amount to be paid for current support and the amount to be paid each month toward arrears.)

(7) The dates that the current support should terminate (for each child).

(8) Name and address of payee.

(f) The notice and documents must be served on the following: Commander, AFAFC, Attn: JA, Denver CO 80279–5000.

SUBCHAPTER C—PUBLIC RELATIONS [RESERVED]
SUBCHAPTER D—CLAIMS AND LITIGATION

PART 841—LICENSING GOVERNMENT-OWNED INVENTIONS IN THE CUSTODY OF THE DEPARTMENT OF THE AIR FORCE

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AUTHORITY: 10 U.S.C. 8012.

SOURCE: 50 FR 20563, May 17, 1985, unless otherwise noted.

Subpart A—General Information

§ 841.0 Purpose.

This regulation prescribes the policies, administrative requirements, procedures, terms, and conditions for licensing of rights in federally owned patents and patent applications vested in the United States of America in the custody of the Department of the Air Force. It is consistent with General Services Administration Licensing of Federally Owned Inventions, 41 CFR 101–4, which implements Pub. L. 96–517. It applies to all requests for a license under an Air Force invention.

§ 841.1 Air Force policy.

Federally owned inventions in the custody of the Department of the Air Force normally will best serve the public interest when they are developed to the point of practical application and made available to the public in the shortest possible time. Nonexclusive, partially exclusive, or exclusive licenses for the practice of these inventions may be granted to applicants who agree to develop and/or market the inventions. All Air Force inventions normally will be made available for the granting of licenses to responsible applicants.

§ 841.2 Execution of licenses.

Nonexclusive, partially exclusive, or exclusive licenses will be executed on behalf of the Department of the Air Force by the Secretary or by anyone to whom this authority is delegated.

§ 841.3 Delegation of authority.

The administration of this part is delegated to The Judge Advocate General, who may redelegate the administration of this part to the Chief, Patents Division, Office of The Judge Advocate General. All communications received in any Air Force activity requesting information regarding the licensing of a Government invention will be acknowledged and sent without further action directly to HQ USAF/JACP, Washington DC 20324.

§ 841.4 Definitions.

(a) *Air Force invention* means an invention, plant, or design which is covered by a patent or patent application in the United States, or a patent, patent application, plant variety protection, or other form of protection in a foreign country, title to which has been assigned to or otherwise vested in the United States Government and in

the custody of the Department of the Air Force.

(b) *Small business firm* means a small business concern as defined in section 2 of Pub. L. 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration.

(c) *Practical Application* means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(d) *United States* means the United States of America, its territories and possessions, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 841.5 Royalties.

(a) Royalties may or may not be charged under nonexclusive licenses granted to US citizens and US corporations on Government inventions; however, the Department of the Air Force may require other considerations when a royalty is not charged.

(b) Normally, an exclusive or partially exclusive license on an Air Force invention will contain a royalty provision and/or other consideration flowing to the Government.

Subpart B—Restrictions and Conditions for Licensing and Types of Licenses

§ 841.6 Restrictions and conditions.

The following restrictions and conditions apply to all licenses granted under this part:

(a) *Restrictions:* (1) A license may be granted only if the applicant has supplied the Air Force with a satisfactory plan for development or marketing of the invention, or both, and with information about the applicant's capability to fulfill the plan.

(2) A license granting rights to use or sell under an Air Force invention in the United States shall normally be granted only to a licensee who agrees that any product embodying the invention or produced through the use of the invention will be manufactured substantially in the United States.

(b) *Conditions.* Licenses shall contain such terms and conditions as the Air Force determines are appropriate for the protection of the interests of the Federal Government and the public and are not in conflict with law or this part. The following terms and conditions apply to any license:

(1) The duration of the license shall be for a period specified in the license agreement, unless sooner terminated according to provisions therein.

(2) The license may be granted for all or less than all fields of use of the invention or in specified geographical areas, or both.

(3) The license may extend to subsidiaries of the licensee or other parties if provided for in the license but shall be nonassignable without approval of the Air Force, except to the successor of that part of the licensee's business to which the invention pertains.

(4) The license may provide the licensee the right to grant sublicenses under the license, subject to the approval of the Air Force. Each sublicense shall make reference to the license, including the rights retained by the Government, and a copy of each sublicense shall be furnished to the Air Force.

(5) The license shall require the licensee to carry out the plan for development or marketing of the invention, or both, to bring the invention to practical application within a period specified in the license, and to continue to make the benefits of the invention reasonably accessible to the public.

(6) The license shall require the licensee to report, at least annually, on the utilization or efforts at obtaining utilization that are made by the licensee, with particular reference to the plan submitted.

(7) Licenses may be royalty-free or for royalties or other consideration.

(8) When the licensee agrees that any products embodying the invention or produced through use of the invention will be manufactured substantially in the United States, the license shall recite such agreement.

(9) The license shall provide for the right of the Air Force to terminate the license, in whole or in part, if:

(i) The Air Force determines that the licensee is not executing the plan submitted with its requests for a license and the licensee cannot otherwise demonstrate to the satisfaction of the Air Force that it has taken or can be expected to take within a reasonable time effective steps to achieve practical application of the invention;

(ii) The Air Force determines that such action is necessary to meet requirements for public use specified by Federal regulations issued after the date of the license and such requirements are not reasonably satisfied by the licensee;

(iii) The licensee has willfully made a false statement of or willfully omitted a material fact in the license application or in any report required by the license agreement; or

(iv) The licensee commits a substantial breach of a covenant or agreement contained in the license.

(10) The license may be modified or terminated consistent with this part upon mutual agreement of the Air Force and the licensee.

(11) Nothing relating to the grant of a license, nor the grant itself, shall be construed to confer upon any person, any immunity from or defense under the antitrust laws or from a charge of patent misuse, and the acquisition and use of rights pursuant to this subpart shall not be immunized from the operation of state or Federal law by reason of the source of the grant.

(12) The license shall contain a provision that the government makes no representation or warranty as to the validity of any licensed patent or patent application, or of the scope of any of the claims contained therein, or that the exercise of the license will not result in the infringement of any other patent and that the Government assumes no liability whatsoever resulting from the exercise of the license.

§841.7 Nonexclusive licenses.

Each Air Force invention normally will be made available for the granting of nonexclusive licenses, subject to the provisions of any other license, including those in §841.8, and subject to the following condition: the nonexclusive license may also provide that, after termination of a period specified in the license agreement, the Air Force may restrict the license to the fields of use or geographic areas, or both, in which the licensee has brought the invention to practical application and continues to make the benefits of the invention reasonably accessible to the public. However, such restriction shall be made only in order to grant an exclusive or partially exclusive license according to this part.

§841.8 Exclusive and partially exclusive licenses.

Each Government invention may be made available for the granting of an exclusive or partially exclusive license subject to the following restrictions and conditions:

(a) *Restrictions.* Exclusive or partially exclusive licenses may be granted on federally owned inventions as follows:

(1) Three months after notice of the invention's availability has been announced in the FEDERAL REGISTER; or

(2) Without such notice where the Air Force determines that expeditious granting of such a license will best serve the interest of the Federal Government and the public; and

(3) In either situation specified in paragraph (a) (1) or (2) of this section only if:

(i) Notice of a prospective license, identifying the invention and the prospective licensee, has been published in the FEDERAL REGISTER, providing opportunity for filing written objections within a 60-day period;

(ii) After expiration of the 60-day period and consideration of any written objections received during the period, the Air Force makes the determinations required by §841.15 favorably to the applicant; and

(iii) The Air Force has given first preference to any small business firms submitting plans that are determined by the agency to be within the capabilities of the firms and as equally likely, if executed, to bring the invention to practical application as any plans submitted by applicants that are not small business firms.

(b) *Conditions.* In addition to the provisions of §841.6, the following terms and conditions apply to domestic exclusive and partially exclusive licenses:

(1) The license shall be subject to the irrevocable royalty-free right of the Government of the United States to practice and have practiced the invention on behalf of the United States and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.

(2) The license shall reserve to the Air Force the right to require the licensee to grant sublicenses to responsible applicants, on reasonable terms, when necessary to fulfill health or safety needs.

(3) The license shall be subject to any licenses in force at the time of the grant of the exclusive or partially exclusive license.

(4) The license may grant the licensee the right of enforcement of the licensed patent pursuant to the provisions of 35 U.S.C. 29, as determined appropriate in the public interest.

§ 841.9 Additional licenses.

Nothing in this part will preclude the Air Force from granting licenses for Air Force inventions which are the result of an authorized exchange of rights in the settlement of patent disputes. The following exemplify circumstances wherein such licenses may be granted:

(a) In consideration of the settlement of an interference;

(b) In consideration of a release of a claim of infringement; or

(c) In exchange for or as part of the consideration for a license under adversely held patents.

§ 841.10 Foreign licenses.

(a) Exclusive or partially exclusive licenses may be granted on an Air Force invention covered by a foreign patent, patent application, or other form of protection, provided that:

(1) Notice of a prospective license identifying the invention and prospective licensee has been published in the FEDERAL REGISTER, providing opportunity for filing written objections within a 60-day period and following consideration of such objections;

(2) The Air Force has considered whether the interests of the Federal Government or United States industry in foreign commerce will be enhanced; and

(3) The Air Force has not determined that the grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the United States in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with antitrust laws.

(b) In addition to the provisions of § 841.6, the following terms and conditions apply to foreign exclusive and partially exclusive licenses:

(1) The license shall be subject to the irrevocable, royalty-free right of the United States Government to practice and have practiced the invention on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States.

(2) The license shall be subject to any licenses in force at the time of the grant of the exclusive license.

(3) The license may grant the licensee the right to take any suitable and necessary action to protect the licensed property on behalf of the United States Government.

Subpart C—Licensing Procedures

§ 841.11 Publication requirements.

The Department of the Air Force will cause to be published in the FEDERAL REGISTER, and at least one other publication that the Air Force deems would best serve the public interest, a list of Government inventions in the custody of the Department of the Air Force available for licensing under the conditions specified in subpart B.

§ 841.12 Request for a license.

Requests for a license under an Air Force invention should be addressed to the Chief, Patents Division, HQ USAF/JACP, Washington DC 20324.

§ 841.13 Contents of a license application.

An application for a license will include:

(a) Identification of the invention for which the license is desired including the patent application serial number or

patent number, title, and date, if known;

(b) Identification of the type of license for which the application is submitted;

(c) Name and address of the person, company, or organization applying for the license and the citizenship or place of incorporation of the applicant;

(d) Name, address, and telephone number of the representative of the applicant to whom correspondence should be sent;

(e) Nature and type of applicant's business, identifying products or services which the applicant has successfully commercialized, and approximate number of applicant's employees;

(f) Source of information concerning the availability of a license on the invention;

(g) A statement indicating whether the applicant is a small business firm as defined in §841.4 of this subpart;

(h) A detailed description of the applicant's plan for development or marketing of the invention, or both, which should include:

(1) A statement of the time, nature, and amount of anticipated investment of capital and other resources which applicant believes will be required to bring the invention to practical application;

(2) A statement as to applicant's capability and intention to fulfill the plan, including information regarding manufacturing, marketing, financial, and technical resources;

(3) A statement of the fields of use for which applicant intends to practice the invention; and

(4) A statement of the geographic areas in which the applicant intends to manufacture any products embodying the invention and geographic areas where applicant intends to use or sell the invention, or both;

(i) Identification of licenses previously granted to applicant under federally owned inventions;

(j) A statement containing the applicant's best knowledge of the extent to which the invention is being practiced by private industry or Government, or both, or is otherwise available commercially; and

(k) Any other information which applicant believes will support a determination to grant the license to applicant.

§841.14 Published notices.

A notice that the prospective exclusive or partially exclusive licensee has been selected will be published by the Department of the Air Force in the FEDERAL REGISTER and a copy of the notice will be sent to the Attorney General. The notice will include:

(a) Identification of the invention;

(b) Identification of the selected licensee; and

(c) A statement that the license will be granted unless any written objection is received within 60 days.

§841.15 Determination to grant or deny exclusive or partially exclusive licenses.

(a) After the notice is published in the FEDERAL REGISTER that a prospective exclusive or partially exclusive licensee has been selected and the 60 days for filing written objections has expired, a decision will be made whether to grant or deny the license considering all arguments and evidence of record. A memorandum of the decision will be prepared and shall include:

(1) An identification of the invention, type of license desired, and name and address of the party applying for the license;

(2) The name and address of all third parties who objected to the granting of the license, if any;

(3) A brief statement of the reasons for the objections, if any;

(4) A discussion of the relative merits of the license application vs. the objections filed by third parties, if any;

(5) Determinations, and reasons supporting the determinations, whether:

(i) The interests of the Federal Government and the public will be served by the proposed license, in view of the applicant's intentions, plans, and ability to bring the invention to practical application or otherwise promote the invention's utilization by the public;

(ii) The desired practical application has not been achieved or is not likely expeditiously to be achieved under any nonexclusive license which has been granted on the invention;

(iii) Exclusive or partially exclusive licensing is a reasonable and necessary

incentive to call forth the investment of risk capital and expenditures to bring the invention to practical application or otherwise promote the invention's utilization by the public;

(iv) The proposed terms and scope of exclusivity are not greater than reasonably necessary to provide the incentive for bringing the invention to practical application or otherwise promote the invention's utilization by the public;

(v) The grant of such license will tend substantially to lessen competition or result in undue concentration in any section of the country in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistant with the antitrust laws; and

(vi) The interest of the United States Government or industry in foreign commerce will be enhanced, if the license request is under a foreign patent, patent application, or other form of protection.

(6) The signature of the individuals making the determinations.

(b) A record of the determinations to grant or deny an exclusive or a partially exclusive license shall be maintained by the Patents Division.

§ 841.16 Modification and termination.

Before modifying or terminating a license, other than by mutual agreement, the Air Force shall furnish the licensee and any sublicensee of record a written notice of intention to modify or terminate the license, and the licensee and any sublicensee shall be allowed 30 days after such notice to remedy any breach of the license or show cause why the license should not be modified or terminated.

§ 841.17 Appeals.

A party whose application for a license has been denied, a licensee whose license has been modified or terminated, in whole or in part, or a party who timely filed a written objection in response to the notice required in § 841.8 and § 841.10 and who can demonstrate to the satisfaction of the Air Force that such party may be damaged by the agency action, may appeal to The Judge Advocate General, any decision or determination concerning the grant, denial, interpretation, modification, or termination of a license. The appeal must be in writing and submitted within 60 days from the date the decision or determination was mailed to the party.

Subpart D—Transfer of Custody of Government Inventions and Confidentiality of Information

§ 841.18 Transfer procedure.

Under certain circumstances it may be in the best interest of the Air Force to enter into an agreement to transfer its custody of any invention to another Government agency for purposes of administration including the granting of licenses pursuant to this part. Such transfers will be made on a case-by-case basis.

§ 841.19 Confidentiality of plans and reports.

Title 35 U.S.C. 209 provides that any plan submitted pursuant to § 841.13 above and any report required by § 841.6 may be treated by the Air Force as commercial and financial information obtained from a person and priviledged and confidential and not subject to disclosure under 5 U.S.C. 552.

PART 842—ADMINISTRATIVE CLAIMS

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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 non-appropriated 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

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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.

[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.

(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 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

[2] See footnote 1 to § 855.6.

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 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.

[3] See footnote 1 to § 855.6.

§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 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.

[4] See footnote 1 to §855.6.

(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.

(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

[5] See footnote 1 to §855.6.
[6] See footnote 1 to §855.6.
[7] See footnote 1 to §855.6.

(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/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

[8] See footnote 1 to § 855.6.

[9] See footnote 1 to § 855.6.

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 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—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.

TABLE 1—PURPOSE OF USE/VERIFICATION/APPROVAL AUTHORITY/FEES—Continued

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

TABLE 1—PURPOSE OF USE/VERIFICATION/APPROVAL AUTHORITY/FEES—Continued

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.

TABLE 1—PURPOSE OF USE/VERIFICATION/APPROVAL AUTHORITY/FEES—Continued

Purpose of use	Verification	Approval * authority	Fees
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.
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.	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.
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.*			
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.

TABLE 1—PURPOSE OF USE/VERIFICATION/APPROVAL AUTHORITY/FEES—Continued

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—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.

TABLE 2—AIRCRAFT LIABILITY COVERAGE REQUIREMENTS—Continued

Aircraft maximum gross takeoff weight (MGTOW)	Coverage for	Bodily injury	Property damage	Passenger
	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.
	Each Accident	1,000,000	1,000,000	100,000 multiplied by 75% multiplied by the number of passenger seats.

TABLE 3—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—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.

Abbreviations and acronyms	Definitions
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.
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 AIR FORCE AIRFIELDS DESIGNATED FOR WEATHER ALTERNATE USE BY SCHEDULED AIR CARRIERS

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

*Formerly Shemya AFB.

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.

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 CARRIER QUALITY AND SAFETY REVIEW PROGRAM

Sec.
861.1 References.
861.2 Purpose.
861.3 DOD commercial air carrier quality and safety requirements.
861.4 DOD Commercial Airlift Review Board procedures.

AUTHORITY: 10 U.S.C. 8013; 10 U.S.C. 2640.

SOURCE: 57 FR 44683, Sept. 29, 1992, unless otherwise noted.

§ 861.1 References.

(a) Section 1204, Public Law 99–661; 10 U.S.C. 2640, Charter Air Transportation of Members of the Armed Forces.

(b) DOD Directive 4500.53, Commercial Passenger Airlift Management and Quality Control.

(c) AMCR 76–8, Contract Airlift Management, Civil Air Carriers.

(d) MTMCR 15–1, Procedure for Disqualifying and Placing Carriers in Nonuse.

§ 861.2 Purpose.

Department of Defense Directive 4500.53, Commercial Passenger Airlift Management and Quality Control, charges the Commander, Air Mobility Command (AMC), with establishing safety standards and criteria for commercial passenger airlift service used by the Department of Defense. It also charges the Commander, AMC, jointly with the Commander, Military Traffic Management Command (MTMC), with establishing the Commercial Airlift Review Board and providing policy guidance and direction for its operation. This part establishes Department of Defense (DOD) quality and safety criteria for commercial air carriers providing or seeking to provide airlift services to the DOD. Included are the operating procedures of the Commercial Airlift Review Board (CARB). The CARB has the authority to suspend air carriers from DOD use

or take other action when issues of air safety arise.

§861.3 DOD commercial air carrier quality and safety requirements.

(a) DOD, as a customer of airlift services, expects an air carrier or operator soliciting for or doing business with the DOD to engage in quality programs and business practices that not only ensure good service but enhance the safety, operational, and maintenance standards established by the applicable Civil Aviation Agency Regulations (CARs). Accordingly, and as required by U.S. Public Law 99–661, the DOD has established a set of air carrier quality and safety requirements that reflect the type programs and practices the DOD seeks from air carriers or operators airlifting DOD resources.

(b) A DOD survey team will use the following requirements, the specifics of the applicable DOD contract or agreement, the CARs, and the experienced judgment of DOD personnel to evaluate an air carrier's capability to perform for the DOD. The survey will also include, with the carrier's coordination, observation of cockpit crew performance, as well as ramp inspections of selected company aircraft. A satisfactory on-site survey (audit) conducted by DOD personnel is prerequisite to participation in the DOD air transportation program. Surveys are conducted prior to an air carrier's acceptance into the program; thereafter, surveys will be completed on a biennial 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 commercial air carrier table-top performance evaluations.

(c) 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/FAA part 135 air carrier may not have a formal flight control function, such as a 24-hour dispatch organization, that same air taxi is expected to demonstrate some kind of effective flight following capability. On the other hand, a major carrier/FAA part 121 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.

(d) The air carrier requirements stated in this part provide the criteria against which would-be DOD air carrier contractors may be subjectively evaluated by the DOD. These requirements are neither all-inclusive nor are they inflexible in nature. They are not replacements for the certification criteria and other regulations established by civil aviation agencies; rather, these requirements are customer-developed and describe enhanced air carrier activities sought by the DOD.

NOTE: The term ''Civil Aviation Agency (CAA)'' is used throughout this part since these requirements are applicable to U.S. and international air carriers doing business with DOD. CAA includes the United States Federal Aviation Administration.

(1) *Quality and Safety Requirements—prior experience.* Commercial air carriers or operators applying to conduct passenger or cargo business for the United States Department of Defense are required to possess 12 months of continuous service equivalent to the service sought by DoD. The service must have been performed for the 12 continuous months immediately prior to applying for DoD business. Prior experience must be equivalent in difficulty and complexity in regard to distance, weather systems, international or national procedures, similar aircraft, schedule demands, aircrew experience, and management required.

(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.

(3) *Quality and safety requirements—operations*—(i) *Flight safety.* Establish 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, that 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 interacting together using standardized procedures and including the principles of Cockpit 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. 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, cockpit 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, 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, in-flight, 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 from 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 risk 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 operation 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 receive proper supervision. Freedom from alcohol abuse and illegal drugs is required.

(ii) *Quality assurance (continuing analysis and surveillance program).* 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 to 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 is 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 authorizations such as inspection and airworthiness release. Trainers are fully qualified in the subject matter.

(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 visibility 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 legibly prepared, dated, clean, readily identifiable, and maintained in an orderly fashion. Inspection compliance, airworthiness release, and maintenance release records, etc., are complete and signed by approved personnel.

(viii) *Aircraft appearance (in-service aircraft).* 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 are schooled 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 CAA, 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 Air Mobility Command contracts or Military Traffic Management Command Military Air Transportation Agreements.

[57 FR 44683, Sept. 29, 1992, as amended at 61 FR 17841, Apr. 23, 1996]

§861.4 DOD Commercial Airlift Review Board procedures.

(a) This part establishes the procedures to be used by the United States Air Force Air Mobility Command (AMC) and the United States Army Military Traffic Management Command (MTMC) when, in accordance with references §861.1 (a) through (d):

(1) A commercial air carrier is subject to review or other action by the DOD Commercial Airlift Review Board (hereinafter referred to as the CARB),

(2) A warning, suspension, temporary nonuse, or reinstatement action is taken against a carrier by the CARB, or

(3) Review or other CARB action is escalated to a higher authority.

These procedures apply to all commercial air carriers providing DOD passenger or cargo airlift through charter, individual ticket movements, contracts, or other transportation agreements. They also apply to carriers providing air transportation purchased by DOD individuals for which government reimbursement will be made in whole or in part.

(b) Safety or airworthiness issues, per reference §861.1(b) must be referred to the CARB. AMC and MTMC may each take independent corrective action in accordance with their respective procedures on standards of service issues when safety and airworthiness issues are not involved. The DOD Air Carrier Survey and Analysis Directorate will be informed of all actions taken independently by AMC or MTMC.

(c) Except as otherwise provided herein, the rights and remedies of the government and commercial air carriers outlined in these procedures are not exclusive and are in addition to any other rights and remedies provided for by law, regulation, contract, or agreement.

(d) *Definitions.* (1) Letter of warning is a notice to a carrier of a failure to satisfy safety or airworthiness requirements which, if not remedied, may result in temporary nonuse or suspension. The issuance of a letter of warning is not a prerequisite to a suspension or other action.

(2) Temporary nonuse is the immediate exclusion of a carrier from any flight activities in the DOD airlift transportation program, pending a decision on suspension, taken under the conditions outlined in paragraph (h)(1) of this section. 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.

(3) Suspension is the exclusion of an air carrier from participating in the DOD airlift transportation program. The period of suspension will normally:

(i) Remain in effect until the carrier furnishes satisfactory evidence that the conditions causing the suspension have been remedied or

(ii) Be for a fixed period of time as determined at the discretion of the CARB.

(4) The procedures for commercial airlift safety review include five possible levels with increasing authority:

(i) DOD Air Carrier Survey and Analysis Directorate.

(ii) DOD Commercial Airlift Review Committee.

(iii) DOD Commercial Airlift Review Board.

(iv) Commanders MTMC and AMC.

(v) DOD Commercial Airlift Review Authority.

These levels are described in reference § 861.1(b), with the exception of the DOD Commercial Airlift Review Committee, which is described in reference § 861.1(c). The Committee provides multifunctional review of the efforts of the DOD Air Carrier Survey and Analysis Directorate, including approval or disapproval of carriers initially seeking DOD business, and offers advice to the higher authorities when appropriate.

(e) *Causes and conditions for suspension.* (1) Carrier shall be subject to suspension for good cause, including:

(i) Failing to comply with generally accepted standards of airmanship, training, and maintenance practices and procedures.

(ii) Failing to satisfy DOD quality and safety requirements as described in § 861.3.

(iii) Failing to comply with all provisions of applicable statutes, agreements, and contract terms, as such may affect flight safety, as well as with all applicable Federal Aviation Administration regulations, airworthiness directives, orders, rules, and standards promulgated under the Federal Aviation Act of 1958 as amended.

(iv) Involvement of one of the carrier's aircraft in a serious or fatal accident, incident, or operational occurrence (regardless of whether or not such aircraft is being used in the performance of government procured transportation).

(v) Any other condition which affects the safe operation of the carrier's flights hereunder.

(vi) Compliance with published standards does not, standing alone, constitute compliance with generally accepted standards or airmanship, training, or maintenance practices.

(f) *Reinstatement considerations.* In no event shall reinstatement occur unless and until the carrier shows to the satisfaction of the CARB that deficiencies that led to suspension have been corrected and that actions have been implemented to preclude the recurrence of similar deficiencies.

(g) *CARB membership.* (1) Four voting members will constitute the CARB; two senior, knowledgeable individuals appointed by Commander, AMC; one similarly knowledgeable individual appointed by USCINCTRANS; and one appointed by Commander, MTMC. At least one of the voting HQ AMC members and the MTMC member will be of general/flag officer or civilian equivalent rank. Other non-voting CARB members will be appointed as necessary to facilitate the CARB deliberative process. A non-voting recorder will also be appointed.

(2) The HQ AMC senior member will act as the CARB chairperson. A voting member who will not be present at any meeting of the CARB, may be represented by a knowledgeable alternate empowered with the voting responsibilities of the voting member. Three voting members (or their alternate) shall constitute a quorum. Decisions shall be by majority vote. In the case of a tie vote, the chairperson will have the deciding vote.

(3) The meeting date, time, and site of the CARB will be determined at the time of the decision to convene the CARB. Teleconferencing, if utilized, will be specified in the notice to the carrier.

(4) Minutes of CARB hearings may be recorded or summarized and will be maintained with all other records pertaining to the CARB proceeding.

(5) The CARB recorder shall ensure that the air carrier and appropriate

DOD agencies are notified of the CARB's decision and reasons therefor.

(h) *CARB operating procedures*—(1) *Temporary nonuse.* (i) In case of a fatal aircraft accident or for other good cause, the two senior members of the CARB (see paragraph (g)(1) of this section) will jointly make an immediate determination whether to place the carrier involved in a temporary nonuse status pending suspension proceedings. Prior notice to the carrier is not required.

(ii) Such determination shall include consideration of the advice of the DOD Commercial Airlift Review Committee, if reasonably available, but will not await such advice.

(iii) The carrier shall be promptly notified of the temporary nonuse determination and the basis therefore.

(iv) Temporary nonuse status terminates automatically if suspension proceedings are not commenced, as set out in paragraph (h)(2)(ii) of this section, within 30 days of inception, unless otherwise agreed to per paragraph (d)(2) of this section.

(2) *Suspension:* (i) On a recommendation of the DOD Air Carrier Survey and Analysis Directorate, the DOD Commercial Airlift Review Committee, or any individual member of the CARB, the CARB shall consider whether or not to suspend a carrier.

(ii) If the CARB determines that suspension may be appropriate, it shall notify the carrier that suspension action is under consideration and of the basis for such consideration and offer the carrier a hearing thereon within 15 days of the date of the notice, or such other period as granted by the CARB, at which the carrier may be present and may offer evidence. The presiding member of the CARB shall establish procedures for such hearing as may be appropriate which shall be as informal as practicable, consistent with administrative due process.

(iii) Types of evidence which may be considered, if appropriate, shall include, but not be limited to, the following:

(A) Information and analysis provided by the DOD Air Carrier Survey and Analysis Directorate.

(B) Carrier's written/oral evidence.

(C) Corrective actions that may have been taken by the carrier to:

(*1*) Correct the specific deficiencies that led the CARB to consider suspension, and

(*2*) Preclude recurring similar deficiencies.

(D) Such other matters as the CARB deems relevant.

(E) The CARB's decisions on the reception or exclusion of evidence shall be final.

(iv) Carriers shall have the burden of proving their suitability to safely perform DOD airlift services by clear and convincing evidence.

(v) After the conclusion of such hearing, or if no hearing is requested and attended by the 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 carrier or to impose such lesser sanction as is appropriate. The carrier shall 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 the reinstatement considerations in paragraph (f) of this section have been satisfied.

(iii) 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 carrier.

(i) *Decision by others.* In the event the CARB is unable to decide an issue properly before it, or if the issue in the judgment of the CARB requires review at a DOD organizational level higher than the CARB, the issue will be referred to the Commander, AMC, and Commander, MTMC, for appropriate disposition. In such event, the decision will be made upon the written record only, no hearing will be held.

(j) *Appeal of a determination.* (1) A carrier placed in suspension may administratively appeal this action to the authorities shown in paragraph (j)(3) of this section. An appeal, if any, must be

filed within 15 work days after receipt of the decision of the CARB or Commander, AMC, and Commander, MTMC. The suspension will not be stayed pending appeal unless for good cause, as determined by the CARB. The decision of the appellate authority designated herein is final and is not subject to further administrative review or appeal.

(2) An appeal will be in writing only and carriers shall not be entitled to a de novo hearing before the administrative appellate authorities.

(3) The following administrative appellate authorities will review and make decisions on appeals:

(i) When the decision being appealed was made by the CARB, the appellate authorities are Commander, AMC, and Commander, MTMC. They will jointly decide the appeal.

(ii) When Commander, AMC, and Commander, MTMC, are unable to jointly agree on an appeal, they shall refer the matter to the DOD Commercial Airlift Review Authority (CARA) for its decision.

(iii) When the decision being appealed was made by Commander, AMC, and Commander, MTMC, the appellate authority is the DOD CARA.

[57 FR 44683, Sept. 29, 1992, as amended at 61 FR 17841, Apr. 23, 1996]

PART 863—LEASING USAF AIRCRAFT AND RELATED EQUIPMENT TO NONGOVERNMENT ORGANIZATIONS

Sec.

863.0 Purpose.

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863.26 Lessee compliance.
863.27 Lessee payments.

AUTHORITY: 10 U.S.C. 2667.

SOURCE: 54 FR 1169, Jan. 12, 1989, unless otherwise noted.

NOTE: This part is derived from Air Force Regulation (AFR) 70–10.

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.

§ 863.0 Purpose.

This part outlines United States Air Force (USAF) policies and procedures for leasing USAF aircraft and related equipment to nongovernment organizations (such as, American manufacturers) under 10 U.S.C. 2667. The intended uses of the leased assets might include, but are not necessarily limited to, participation in national and international trade or air shows, foreign military sales or direct foreign sales demonstrations, independent research and development efforts by defense firms, and direct or indirect support of United States Government (USG) contracts. This part does not apply to military leases of USG property to foreign governments or international organizations (such as, North Atlantic Treaty Organization) under Chapter 6 of the Arms Export Control Act. This part establishes the responsibilities for evaluating lease requests, obtaining

approvals, and negotiating and administering the lease agreements. This part applies to the Office of the Secretary of the Air Force, the Air Staff, Air Force Systems Command (AFSC), and Air Force Logistics Command (AFLC). This part requires coordination with the USAF operational commands, the Air Force Reserve, and the Air National Guard when their assets are under consideration for lease. It implements DOD Instructions 7230.7, January 29, 1985 (32 CFR part 288), and 7230.8, June 9, 1976.

Subpart A—Policy and Responsibilities

§863.1 Leasing policy.

10 U.S.C. 2667 provides the Secretary of the Air Force the authority to lease assets under the control of the USAF to nongovernment organizations. When the Secretary considers it advantageous for the United States, leases may be approved under such terms and conditions the Secretary considers will promote the national defense or be in the public interest. The statute provides that the property must be under the control of the department; not for the time needed for public use; and not excess property. Typically, the USAF does not lease assets which are otherwise available from commercial sources.

§863.2 SAF/AQ responsibilities.

(a) The Secretary of the Air Force delegated the statutory authority to approve leases to the Assistant Secretary of the Air Force for Acquisition (SAF/AQ). Since final leasing authority rests at the secretariat level, field and staff elements must take care not to preempt or prejudice the Secretary's authority to determine whether a proposed lease is advantageous to the United States and what terms and conditions will be considered as promoting the national defense or being in the public interest.

(b) SAF/AQ determines whether a lease request from a nongovernment organization or from a command on behalf of a nongovernment organization meets the general guidelines of this part. Furthermore, SAF/AQ ensures that the Air Staff (HQ USAF/LE, PR, XO, CC), the Office of the Secretary of the Air Force (SAF/AC, PA, GC), Defense Security Assistance Agency (DSAA), and USAF operational commands, the Air Force Reserve, or Air National Guard when their assets are potential lease candidates have coordinated, as necessary, before recommending that SAF/AQ sign a Determination and Finding (D&F). This document designates which command, normally AFSC or AFLC, will negotiate and execute the lease agreement and outlines the basic terms and conditions which must be contained in the lease. SAF/AQ makes the determination if it is unclear whether AFSC or AFLC should assume a particular leasing action. The determination and finding format for authority to lease United States government property is shown below.

DETERMINATION AND FINDING FORMAT

The Department of the Air Force (USAF) proposes to lease aircraft to for a period. (Describe the details of the proposed lease activity.) As consideration for the lease, the lease will contain the following additional terms and conditions:

(1) The leased property shall not be transferred, encumbered, or used for other purposes without the written consent of the Secretary of the Air Force.

(2) The leased property shall be furnished ''as is'' without any warranty, express or implied, as to serviceability, fitness for use, or other matters.

(3) The lessee shall pay the United States Government (USG) all rent, costs, and charges associated with the use of the leased property while under lease according to 32 CFR part 288 and this Determination and Finding.

(4) The lessee shall maintain the leased property during the term of the lease in a safe and serviceable condition according to prescribed USAF standards or pay the full cost of any such maintenance accomplished by the USG.

(5) Support provided by the USG, if any, shall be on a noninterference, reimbursable basis, including use of support aircraft, equipment, and facilities. The availability of such support, and the computation of any associated charges or costs, will be according to applicable Department of Defense directives and instructions and USAF regulations and manuals.

(6) The lessee shall be responsible for all costs relating to the leased property during the term of the lease including, without limitation, expenses of operation, maintenance, display, demonstration, ferrying, transportation, support, and protection.

(7) The lessee shall not include any charges or costs resulting from the lease authorized hereby directly or indirectly in any USG contract, except to the extent authorized under the Federal Acquisition Regulations.

Optional (7) Except as otherwise authorized under the Federal Acquisition Regulations, the lessee shall not include any charges or costs resulting from the lease authorized hereby directly or indirectly in any USG contract except for DOD contracts expressly requiring use of the leased property and then only to the extent that such costs are properly allocable to such contracts and reimbursable according to the terms thereof. Costs charged to the USG respecting the leased property under any such contracts will not exceed the lessee's costs under the lease.

(8) The lessee shall assume the risk of loss, damage, or destruction to the leased property. The risk will be covered by insurance on the depreciated value of the property or, with the USG's approval, the lessee may be self-insured.

(9) The lessee shall indemnify and hold the USG, its agents, officers, and employees harmless from any and all loss and liability (whether in tort or contract) which might arise in connection with the lease because of: (a) Injury or death of personnel of the USG, the lessee, or third parties; and (b) damage to or destruction of property of the lessee or third parties, and leased property, support equipment, or other property of the USG. The lessee shall obtain insurance adequate to cover all such liabilities.

(10) The lessee shall return all leased property to the USAF, at such place as is designated by the contracting officer, in the same condition as when accepted, fair wear and tear expected. If the USAF determines that any of the leased property was not returned in such condition, or has not been maintained according to prescribed USAF standards, the lessee shall reimburse the USAF for the cost of returning such property to its proper condition.

Optional (10) The lessee shall return all leased property to the USAF, at such place as is designated by the contracting officer, in the same condition and configuration as when accepted, fair wear and tear expected. If the USAF determines that any of the leased property was not returned in such condition or configuration, or has not been maintained according to prescribed USAF standards, the lessee shall reimburse the USAF for the cost of returning such property to its proper condition and pre-lease configuration.

(11) The lease may be revocable by the USAF at any time. The lease may be terminated by the lessee at any time upon 15 days prior written notice, subject to the lessee's residual responsibilities under the lease (to return leased property, to pay all costs resulting from the lease, to indemnify and hold harmless the USG, etc.).

(12) The lessee shall assume responsibility that may be imposed by other Government agencies for certification and registration of the leased property and for payment of any taxes or other charges thereon.

Optional (13) During the term of the lease, the lease status of the leased property may be interrupted from time to time by the USAF and the property made available for other USG activities under USG contracts with the lessee. During such periods, the property will revert to Government-Furnished Property status under the applicable USG contract. Any doubt as to the status of the leased property at any particular time will be resolved in favor of lease status.

Optional (14) The lessee shall secure necessary Defense Security Assistance Agency and State Department clearances prior to commencement of any demonstration or evaluation flights for representatives of foreign governments.

Optional (15) Orientation flights for United States Congressional and news media representatives and orientation and evaluation flights for foreign nationals shall be subject to approval according to Department of Defense Regulation 4515.13R.

Optional (16) The lessee planning to fly leased aircraft at the air show shall prepare an air show plan for the USAF's approval which provides information on: scheduled use of the leased property; qualifications and duties of lessee personnel attending the air show; intended and contingency flight profiles; provisions for ensuring adequate preflight crew rest and for ensuring proper preflight briefings and postflight debriefings; and provisions for obtaining a visual record, and flight data recorder coverage (if aircraft is so equipped) of practice and show flight demonstrations, and orientation flights. USG approval of, or involvement in, such plan shall not diminish the lessee's assumption of risk of loss and liability in connection with the lease.

Pursuant to title 10, United States Code, section 2667, I find that the property to be leased is under the control of the USAF; it is not excess property as defined by section 472 of title 40, United States Code; but it is not for the time needed for public use. I consider the above described lease of such property to be advantageous to the United States and such terms to be in the public interest.

The Commander, , or designee, is authorized to execute a lease according to this Determination and Finding.

§ 863.3 AFSC responsibilities.

AFSC evaluates lease requests, determines asset availability, and negotiates approved leases. When a prospective lessee desires to lease an asset

being acquired or managed by a System Program Office (SPO), that SPO evaluates the lease request, makes its recommendation to HQ AFSC/PKC, and negotiates the lease agreement, if approved by SAF/AQ.

§863.4 AFLC responsibilities.

AFLC evaluates lease requests, determines asset availability, and negotiates approved leases. When a prospective lessee requests the lease of an asset managed by AFLC or an asset under the control of any of the USAF operational commands, the AFLC Air Logistics Center (ALC) most familiar with the asset evaluates the lease request and makes its recommendation to HQ AFLC/PM. The Wright-Patterson Contracting Center (WPCC) negotiates the lease agreement, if approved by SAF/AQ.

Subpart B—Basic Terms and Conditions

§863.5 Authorized uses.

The lease agreement will specify what uses may be made of the leased property. The authorized uses of the leased property need not support a USG contract or requirement. The lease may limit or specify the location of lease performance.

§863.6 Lease charges.

(a) Lease charges are comprised of rent, reimbursement of any out of pocket expense to the USG, and other costs which the lessee must pay according to the terms of the lease. Pursuant to 32 CFR part 288, User Charges, rent must include charges for depreciation and interest on investment. These charges may be assessed on a daily, monthly, or yearly basis as determined appropriate by the cotnracting officer. For example, if the lease period is short term or if the leased property is being modified in such a way as to preclude its return to the USAF for immediate use to satisfy a USG mission requirement, charge rent during the entire lease term. However, if the lease period is long term and lease activities are actually intermittent rather than continuous, charge rent only during those times the leased property is actually in use by the lessee or unavailable for USAF use.

NOTE: Periods of use are defined in the lease.)

(b) It may be appropriate to assess flying-hour charges if an aircraft is leased. Flying hour charges can be assessed for depot maintenance, replenishment spares, base support, etc., depending on the leasing situation. If an operational aircraft is leased, payment of depot maintenance and replenishment spares charges would be in order. If the lessee is authorized under the lease to obtain spare parts from the supply system, the lessee should either pay the spares flying-hour charges or reimburse the USG the cost of the spare part plus the cost of providing it.

(c) Leases should include a charge for general and administrative expenses of the USG. The contracting officer should assess a charge of 10 percent of all other lease charges to recoup the USG's general and administrative expenses.

(d) SAF/ACCS sets depreciation, interest on investment, and flying-hour charges. When the specific item to be leased is identified, these rates may be based on supplemental information from the SPO or ALC as to the property's acquisition cost, replacement cost, age, major modifications, salvage value, etc. When the specific item is not identified or actual costs are unknown, use reasonable estimates. The contracting officer is authorized to communicate directly with SAF/ACCS in determining rental charges. Also assess rent for pieces of support equipment which the lessee may require to support the major items of leased property. In such cases, SAF/ACCS may recommend the use of the rates set forth in the Use and Charges clause in the Federal Acquisition Regulation for rental computation.

(e) When the lease activity being pursued by the lessee is of particular interest to the USG, the contracting officer may arrange to receive a technical report from the lessee. The value of the report, as established by the contracting officer, can represent a credit against rental charges otherwise due under the lease. Such a credit must not exceed the rental charges owed by the lessee.

§ 863.7 No cost to the USG.

The lessee is responsible for all rent, costs and charges relating to the leased property during the lease. Generally, the lessee may not include any charges or costs resulting from the lease directly or indirectly in any USG contract or subcontract. Exceptions may be approved for contracts for foreign military sales, for independent research and development costs, international air show costs and in other limited cases where specific USG contracts or programs benefit from the lease activities or when otherwise authorized by law.

§ 863.8 Risk of loss.

The lessee must agree to assume the risk of loss, damage, or destruction of the leased property during the period of the lease. This applies when equipment or an aircraft is leased whether a lessee or USAF operator or pilot is operating the equipment or acting as pilot in command. The lessee must obtain insurance to cover the insurable value of the leased property, unless the contracting officer agrees that the lessee may be self-insured.

§ 863.9 Indemnification of the USG.

The lessee must agree to hold harmless and indemnify the USG, its agents, employees, and officers from any and all loss and liability. The lessee must obtain insurance adequate to cover all such liabilities.

§ 863.10 Maintenance responsibilities.

The lessee must maintain the leased property during the lease period according to standards established by the USG or pay the cost of maintenance accomplished by the USG.

§ 863.11 Inspection responsibilities.

The contracting officer should ensure appropriate inspections are performed by contract administration services personnel or others during lease performance and by the activity receiving the property after lease performance to determine whether the lessee maintained and leased property according to USAF standards.

§ 863.12 USG support.

Any support provided the lessee by the USG will be on a noninterference, cost-reimbursable basis. This applies to material, facilities, support aircraft, and crewmembers.

§ 863.13 Terminating the lease agreement.

The USG may terminate the lease at any time and at no cost. The lessee may terminate the lease upon prior written notice to the contracting officer and subject to its residual responsibilities under the lease (payment of charges, return of the leased property, etc.). In long-term leases it may be appropriate to provide for periodic interruptions of the lease so the leased property can be returned to the USG to satisfy its requirements.

§ 863.14 DSAA and State Department approvals.

When a lessee poroposes to demonstrate the leased property to representatives of foreign governments or international organizations or to participate in international air shows, the lessee must secure DSAA approval and obtain export license clearance from the State Department. If the lessee knows the details of the proposed demonstration or evaluation at the time the lease request is submitted, SAF/AQ will obtain DSAA coordination when processing the lease request to the SAF/AQ for approval. If these details are unknown at the time of the lease request, then the lessee must obtain DSAA approval by separate request through HQ USAF/PRI (Directorate of International Programs) channels.

§ 863.15 Flights for dignitaries.

The lessee must get prior approval for flights if one of the authorized uses of a leased aircraft is orientation flights for foreign nationals or dignitaries, including members of Congress and representatives of the US news media (see DOD Regulation 4515.13R).

§ 863.16 Air show participation plan clause.

Leases authorizing participation in an international air show must contain

a provision requiring the lessee to obtain prior USAF approval of its plans for conducting flight operations and providing adequate crew rest. The provision also requires the lessee to describe its demonstration flight profiles. Leases for international air shows require compliance with part 862 of this chapter. The Air Show Participation Plan clause is shown below.

AIR SHOW PARTICIPATION PLAN CLAUSE

(a) Prior to any flight performed for demonstration, exhibition, practice, or evaluation purposes at a scheduled international air show as authorized elsewhere in this lease, the Lessee shall obtain the approval of the Director of Operations and Readiness, Headquarters, USAF (AF/XOO), for an Air Show Participation Plan covering the following:

(1) Detailed schedule of planned use of the leased aircraft.

(2) The name (or names) and qualifications of the pilot (or pilots) who are scheduled to fly the aircraft in practice, deployment or redeployment, and air show flights.

(3) Specific information on the qualifications of other crewmembers who may be needed.

(4) The names, qualifications, and exact duties of contractor supervisory personnel who may take part in any way in the management and control of the USAF aircraft while it is leased.

(5) The intended flight profiles planned for:

(i) Favorable weather conditions (specify favorable weather conditions for subject aircraft).

(ii) Weather conditions less than favorable but above the air show minimums, AFRs 60–16 and 60–18, and the aircraft handbook (Technical Order) limitations.

(iii) Alternate modified profiles for both weather conditions that would be flown if air show authorities limit flight time due to scheduling problems.

(6) Provisions for ensuring adequate preflight crew rest for the pilot (or pilots) and other crewmembers. This must include the way in which the flightcrews (pilots) will be isolated from potential marketing or other pressures that may be expected in the internal air show environment.

(7) Specific schedule and attendees at preflight planning, preflight briefings, and postflight debriefings.

(8) Provisions for providing a visual record of all practice flights and air show demonstrations (16mm film or three-fourth inch video tape).

(9) Provisions for providing maximum flight data recorder coverage (if subject aircraft is normally flight data recorder equipped) of all practice flights and air show flight demonstrations.

(10) Provisions for ensuring the pilot who flies the aircraft wears suitable flight clothing for maneuvers to be performed (such as, anti-g suit).

(11) The Air Show Participation Plan as submitted for such required approval shall specify each nonstandard configuration of the aircraft to be leased and shall list each item of equipment or stores intended to be incorporated in or used to support the leased aircraft that is not part of the USAF standard equipment or approved stores list.

(b) Lessee's initial proposal and any revised proposals for such Air Show Participation Plan are to be submitted to the cognizant Systems Program Office or Plant Representative Office according to part 862 of this chapter.

(c) The provisions of such Air Show Participation Plan as so approved shall be complied with by the Lessee as regards all air show demonstrations, exhibition, and evaluation flights performed with the leased property during the term of this lease, at or in the general vicinity of the air show location, and shall also be complied with regarding all practice and pilot qualification flights performed during the term of this lease in preparation for such demonstration, exhibition, or evaluation flights.

(d) The Lessee shall permit the Contract Monitor or a delegate, as appointed by the United States Government (USG) for this lease, to monitor air show participation under this lease, and to have access to the leased aircraft during the entire period of air show participation and during all periods of practice or qualification for such air show participation as authorized under this lease, together with access to the maintenance and staging areas used for such participation or practice.

(e) The Contract Monitor shall be considered an element of USAF support, the costs of which are charged to the Lessee as lease support costs.

(f) The Lessee shall submit to the Contracting Officer, within thirty days after the completion of such air show participation authorized under this lease, a lease completion report outlining and explaining any problems encountered in and during the performance of the lease as regards such aircraft practice and participation flights, together with recommended procedures and procedural changes to improve the safety of USAF aircraft leased for air show participation under future leases. If no such problems are encountered, a negative report shall be submitted. The Lessee shall also, upon the written request of the Contracting Officer, and at no cost to the USG under this lease, provide the USG with copies (duplicate) of all visual record and of the flight recorder

data of all practice flights and air show demonstrations as called for in the foregoing paragraphs.

(g) The Lessee shall also advise the cognizant System Program Director of its proposed participation in static displays or flights demonstrations at the air show, and shall ensure that appropriate Lessee personnel are available, at the time and place designated by the System Program Director, to receive a cautionary prebriefing on the military security requirements and other sensitive areas related to the leased aircraft and equipment.

(h) It is mutually understood and agreed that the sole purpose of this clause is to give the USG full knowledge of the intended use of the leased property and an opportunity to observe the Lessee's compliance with its proposed plan. Lessee acknowledges and agrees that the USG makes no warranty that the approve plan is safe and that the USG assumes no risk of loss or liability to third parties that may arise despite the Lessee's adherence to the approve plan. This clause creates no exceptions to the Lessee's obligations to assume risk of loss and third party liability, including obtaining insurance, as set out fully in the clauses elsewhere in this lease.

Subpart C—Lease Requests and Evaluation

§ 863.17 Request initiation.

The prospective lessee initiates the lease request and submits it to the appropriate SPO or ALC responsible for the items described under the lease. The lease request must contain, as a minimum, the following information:

(a) Identification of the property to be leased (including tail numbers or part numbers, if known).

(b) Purpose of the lease.

(c) Proposed start date and duration.

(d) Proposed location(s) of the lease activity.

(e) Expected benefits to the lessee.

(f) Expected benefits to the USG.

(g) Statement as to nonavailability of suitable commercial items.

(h) Other pertinent facts (flights for dignitaries, for example).

§ 863.18 SPO or ALC.

When the SPO or ALC receives a request to lease USAF assets, they evaluate the request for the benefits to the USG and the lessee and the availability of the property during the proposed lease period. Also, they address the appropriateness of the intended use of the property and any limitations on reservations which should be imposed on such use. If the property requested for lease is assigned to an operational command, the SPO or ALC coordinates with that command then sends the request through contracting channels to command headquarters.

§ 863.19 HQ AFSC or HQ AFLC.

Command headquarters review each lease request and prepare a draft Secretarial D&F. The command then forwards the lease package consisting of the lease request, the D&F, and other supporting data with an endorsement to SAF/AQC for approval. The command forwards lease packages requesting participation in an international air show to HQ USAF/XOO (with an information copy to SAF/AQC).

Subpart D—Coordination and Approval Process

§ 863.20 Air Staff coordination.

Coordination requirements depend on the intended use of the leased items and whether the items are developmental or operational. SAF/AQC coordinates with HQ USAF/XOO, PRI, and LEY, as necessary. SAF/AQC coordinates with HQ USAF/PRP on the use of aerospace vehicles counted in the USAF inventory. If the proposed lease is for participation in an international air show, follow part 862 of this chapter.

NOTE: HQ USAF/XOO approves the lessee's international air show plans, including flight profiles. HQ USAF/PRI coordinates on requests involving demonstrations of leased property to representatives of foreign governments.

§ 863.21 Secretariat approval process.

Secretariat coordination and approval involves offices of diverse responsibilities. SAF/PA coordinates on air show lease requests. SAF/ACCS reviews all requests and provides rental charge guidance to the contracting officer. The DSAA approves all requests involving potential sales to foreign governments and organizations. In all cases SAF/GC reviews lease requests and D&Fs. SAF/AQ gives final approval on all lease requests.

§863.22 Processing time.

The coordination and approval process for a routine lease request usually takes four weeks. Prospective lessees and the commands should plan on a minimum of four weeks for approval of the D&F once a lease request reaches the SAF/AQC. Lease requests received with insufficient lead time may be returned without action.

Subpart E—Lease Negotiation and Administration

§863.23 AFSC lease negotiation.

The AFSC SPO responsible for an item which is approved for lease must negotiate the lease according to the signed D&F. The office which negotiates a lease is also responsible for amending it and recommending renewal, if appropriate. The SPO is also responsible for working with SAF/ACCS to determine the appropriate lease charges.

§863.24 AFLC lease negotiation.

WPCC negotiates leases of equipment no longer being acquired by AFSC. WPPC also amends leases and recommends renewal, if appropriate. The Secretarial D&F sets the basic terms and conditions which must be incorporated into the lease. WPCC works with SAF/ACCS to establish the proper lease charges.

§863.25 Delegation of lease administration.

After negotiation, the SPO or WPCC delegates the lease to the cognizant contract administration office for administration. However, if the lease is to be performed overseas, the contracting officer may retain administration.

§863.26 Lessee compliance.

The contract administration activity must make sure that the lessee is complying with all the terms and conditions of the lease. The lessee must follow maintenance requirements, obtain necessary approvals keep use records upon which rental charges may be calculated, and pay rental and other charges according to the lease agreement.

§863.27 Lessee payments.

Payments for rental (including depreciation and interest on investment) must be returned to miscellaneous receipts of the US Treasury. Payments for flying-hour charges and reimbursement for support or services provided by the USG may be credited to the appropriation of the activity to which the leased property is assigned or which provided the support or service. If the lessee is authorized to obtain material from the supply system, it can only be provided on an as available, reimbursable basis. The contracting officer provides instructions to the lessee and appropriate accounting and finance office on handling payments.

SUBCHAPTER G—ORGANIZATION AND MISSION—GENERAL

PART 865—PERSONNEL REVIEW BOARDS

Subpart A—Air Force Board for Correction of Military Records

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Subpart A—Air Force Board for Correction of Military Records

SOURCE: 61 FR 16047, Apr. 11, 1996, unless otherwise noted.

AUTHORITY: 10 U.S.C. 1034, 1552.

§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, 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.

(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., Section 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/MIBR, 550 C Street West, Suite 40, Randolph AFB TX 78150–4742.

(4) The AFBCMR, 1535 Command Drive, EE Wing 3rd Floor, Andrews AFB MD 20331–7002.

(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 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 three years after the error or injustice was discovered, or, with due diligence, should have been discovered. 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 38 U.S.C. 3402, and other persons determined by the Executive Director of the Board to be competent to represent the interests of the applicant.

(2) See Department of Defense Directive (DoDD) 7050.6, Whistleblower Protection Act, 3 September 1992,[1] 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 twenty-five double-spaced typewritten pages.

[1] Copies of the publication are available, at cost, from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

(2) Must be typed on one side of a page only with not more than twelve characters per inch.

(3) Must be assembled in a manner that permits easy reproduction.

(j) Responses to advisory opinions must not exceed ten double-spaced typewritten pages and meet the other requirements for briefs.

(k) These limitations do not apply to supporting documentary evidence.

(l) In complex cases and upon request, the Executive Director of the Board may waive these limitations.

(m) *Withdrawing applications.* Applicants may withdraw an application at any time before the Board's decision. Withdrawal does not stay the three-year time limit.

§ 865.4 Board actions.

(a) *Board information sources.* The applicant has the burden of providing sufficient evidence of probable 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 require the applicant to furnish additional information necessary to decide the case.

(b) Applicants will normally be given an opportunity to review and comment on advisory opinions and additional information obtained by the Board.

(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 paragraph (f) of this section 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.

(g) The Executive Director will notify the applicant or counsel, if any, of the time and place of the hearing. Written notice will be mailed thirty days in advance of the hearing unless the notice period is waived by the applicant. The applicant will respond not later than fifteen 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.

(h) When granted a hearing, the applicant may appear before the Board in person, represented by counsel, or in person with 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.

(i) 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 two hours but may allow more time if necessary to ensure a full and fair hearing.

(j) Additional provisions apply to cases processed under 10 U.S.C. 1034. See DoDD 7050.6.[2]

(k) 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.

(l) *Board decisions.* The panel's majority vote constitutes the action of the Board. The Board's decision will be in writing and will include determinations on the following issues:

(1) Whether the provisions of the Military Whistleblowers Protection

[2] See footnote 1.

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 (§865.2(b)).

(m) *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.

(n) *Minority reports.* A dissenting panel member may prepare a minority report which may address any aspect of the case.

(o) *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 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.

(p) *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 involve an appointment or promotion requiring confirmation by the Senate.

(q) 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.

§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 decision will be in writing and will include a brief statement of the grounds for denial.

(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 ninety 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 section but may be the basis for reconsideration by the Board under § 865.6.

(c) Decisions in cases filed under Section 507, Public Law 103–160. The Secretary will issue a decision within 60 days of receipt of the case of an officer who:

(1) Was offered the opportunity to be discharged or separated from active duty under the Voluntary Separation Incentive (VSI) or Special Separation Benefit (SSB) programs,

(2) Elected not to accept such discharge or separation,

(3) Was thereafter discharged or separated from active duty, after September 30, 1990, as a result of selection by a board convened to select officers for early separation (a ''RIF board''),

(4) Files an application with the Board within two years of the date of separation or discharge, or one year after March 1, 1996, whichever is later, alleging that the officer was not effectively counseled, before electing not to accept discharge or separation under the VSI/SSB programs, concerning the officer's vulnerability to selection for involuntary discharge or separation (''RIF''), and

(5) Requests expedited consideration under this section.

(d) Upon finding of ineffective counseling, the Secretary will provide the officer with an opportunity to participate, at the officer's option, in the VSI or SSB programs or, if eligible, in an early retirement program.

(e) In cases under §§ 865.5(b) and 865.5(c) which involve additional issues not cognizable under those sections, the additional issues may be considered separately by the Board under §§ 865.3 and 865.4. The special time limits in §§ 865.5(b) and 865.5(c) do not apply to the decision concerning these additional issues.

§ 865.6 Reconsideration of applications.

The Board may reconsider an application if the applicant submits newly discovered relevant evidence that was not available when the application was previously considered. The Executive Director will screen each request for reconsideration to determine whether it contains new evidence.

(a) If the request contains new evidence, the Executive Director 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.

(b) If the request does not contain new evidence, the Executive Director will return it to the applicant without referral to the Board.

§ 865.7 Action after final decision.

(a) *Action by the Executive Director.* The Executive Director 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.

(c) 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.

(d) 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.

(e) *Public access to decisions.* After deletion of personal information, AFBCMR decisions will be made available for review and copying at a public reading room in the Washington, DC metropolitan area.

§ 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.

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
.....	.....	.....	.....	.....	.....	.....

SUMMARY OF STATISTICS FOR AIR FORCE DISCHARGE REVIEW BOARD—Continued

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 PERSONNEL

Sec.
881.1 Explanation of terms.
881.2 General guidance.
881.3 Application procedures.
881.4 Application screening.
881.5 Individiual Service Review Board.
881.6 Application processing.
881.7 Disposition of documents.

AUTHORITY: Sec. 8012, sec. 401, Pub. L. 95–202.

SOURCE: 49 FR 21532, May 22, 1984, unless otherwise noted.

NOTE: This part is derived from the Air Force Regulations 30–45, 15 December 1983.

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.

§ 881.1 Explanation of terms.

(a) *Active military service.* The same as in section 101, title 38, United States Code.

(b) *Applicant.* A person who applies for a discharge based on membership in a group determined by the Secretary of the Air Force to have performed active military service with the US Air Force or a predecessor organization. An application may be made on behalf of such a person, if he or she is deceased or mentally incompetent, by the spouse, next of kin, or legal representative.

(c) *Certified group.* A group that has been determined by the Secertary of the Air Force to have rendered service that constituted active military service.

(d) *Characterization of service.* A determination reflecting a member's behavior and performance of duty during a specific period of service. Under this part, service may be characterized as: (1) Honorable, or (2) Under Honorable Conditions (General Discharge).

(e) *Discharge.* Complete severance from the active military service on which the application for discharge is based. Also, the assignment of a reason for such discharge and characterization of service.

(f) *Group.* An organization similar to the Women's Air-forces Service Pilots, and whose members rendered service to the Armed Forces of the United States in a capacity considered civilian employment or contractual service at the time such service was rendered.

§ 881.2 General guidance.

(a) *Group determinations.* Acting as the Executive Agent for the Secretary of Defense, the Secretary of the Air Force will determine whether the service rendered by a group shall be considered active military service for the purpose of all laws administered by the Veterans Administration.

(b) *Individual applications for discharge.* (1) Following the determination by the Secretary of the Air Force that the service of a group is considered active military service, individuals claiming to have been members of that group may apply for discharge to the appropriate military department. Applications made to the Department of the Air Force will be processed according to this part.

(2) If an applicant is determined to have been a member of a certified group, during the dates of its qualification, and the characterization of service is honorable or under honorable conditions, the Secretary of the Air Force or designee will issue a discharge certificate and a DD Form 214, Certificate of Release or Discharge From Active Duty, to the applicant.

§ 881.3 Application procedures.

(a) *Who may apply.* Any person who claims to be a member of a certified group may apply for discharge. An application may be made on behalf of such a person, if he or she is deceased or mentally incompetent, by the spouse, next of kin, or legal representative. Proof of death or mental incompetency, as appropriate must accompany such an application.

(b) *Where to apply.* An application for discharge from the Air Force may be sent to Headquarters Air Force Manpower and Personnel Center, Directorate of Manpower and Personnel Data Systems, Records Management Division, Airman Actions Branch, Boards and Correction Section (HQ AFMPC/MPCDOAI), Randolph AFB TX 78150.

(c) *How to apply.* (1) An application may be made using 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 United States, or in narrative form.

(2) Forms are available on request by writing to HQ AFMPC/MPCDOAI, Randolph AFB TX 78150, or to the National Personnel Records Center (NPRC), 9700 Page Boulevard, St Louis MO 63132.

(3) Applications should be as complete as possible. The burden of proof is on the applicant. The applicant should provide all available evidence to support a claim for membership in the group and to determine the character of service performed. The Individual Service Review Board will have available a copy of the report of the Advisory Panel to the DOD Civilian/Military Service Review Board, which may contain information pertinent to individual service.

(4) Documentation may include, but is not limited to, separation or discharge certificates, mission orders, identification cards, contracts or personnel action forms, employment records, education certificates, diplomas, pay vouchers, certificates of awards, casualty information, and any other supporting evidence of membership, or character of service performed.

(5) The Air Force will not provide representation by counsel for the applicant, nor will it defray costs of such representation under any circumstances.

(d) *When to apply.* There is no specific time for submitting an application for discharge.

§ 881.4 Application screening.

HQ AFMPC/MPCDOAI will acknowledge receipt of each application. The application will then be reviewed to see if it is proper and complete.

(a) An application that should be considered by another military department will be referred to that department, and the applicant will be sent a written notice or a copy of the referral letter.

(b) If the Secretary of the Air Force has not made a determination concerning the particular group in which an applicant claims membership, the applicant will be returned without prejudice. An application may be resubmitted after Secretarial determination that the group is certified.

(c) Applications made by a group (or individuals on behalf of a group) are not processed under this part. If such applications are received, they are to be referred to the Secretary of the Air Force, Manpower, Reserve Affairs and Installations, Personnel Council (SAF/MIPC). The Pentagon, Washington DC 20330, for further review.

(d) Incomplete applications will be returned to the applicant without prejudicing later consideration.

(e) All proper, complete applications will be referred to the Individual Service Review Board for further consideration.

§ 881.5 Individual Service Review Board.

(a) *Purpose.* The Individual Service Review Board is established by the Secretary of the Air Force at AFMPC to:

(1) Review applications for discharge under this part.

(2) Make findings of fact based on evidence submitted; and,

(3) Based on those findings, act further on the application as outlined in section 6 of this part.

(b) *Composition.* The Board consists of military members in grade lieutenant coloniel or higher, and civilian members, grade GS–12 or higher, appointed by the Assistant Deputy Chief of Staff, Manpower and Personnel for Military Personnel (HQ USAF/MPC). Three members constitute a quorum. The senior member acts as Board chairperson. A nonvoting recorder keeps a record of the Board's actions concerning an application.

(c) *Administrative support.* The Directorate of Personnel Program Actions, Separation Programs and Procedures

Branch (HQ AFMPC/MPCAKP), Randolph AFB TX 78150, provides administrative support to the Board.

§881.6 Application processing.

(a) *Individual Service Review Board.* The Board meets in closed session and considers the application, all evidence submitted, and other relevant information available. Applicants or their representatives do not have the right to appear before the Boards.

(b) *Board findings.* The Board makes findings of fact based on the evidence and information available, and determines whether the applicant was a member of a certified group during the dates of its qualification and, accordingly, whether the application for discharge should be approved or disapproved.

(c) *Board determinations.* The Board determines that the application for discharge should be approved; the Board also determines the period and character of the applicant's service.

(d) *Approved applications.* (1) If the Board approves an application for discharge and determines that the service characterization should be DD Form 256 AF, Honorable Discharge, and a DD Form 214, under AFR 35–6. A military grade will be entered on the DD Form 214 only upon an individual request from the administrator of Veteran's Affairs. For the purpose of Veteran's Administration benefits, a pay grade is needed only in cases when an individual was killed or received service-related injuries or disease during the approved period of service. Proof of grade criteria, in order of importance, is cited in DOD 1000.20, Section G, paragraph 5.

(2) If the Board approves an application for discharge but determines that the service characterization should be ''Under Honorable Conditions'' (General Discharge), the case is forwarded to the SAF/MIPC for a final decision. After the final decision on the case, HQ AFMPC/MPCDOAI issues the appropriate discharge certificate and a DD Form 214 to the applicant.

(3) If the applicant challenges the characterization of a discharge issued by the Air Force, the applicant may appeal the characterization by submitting DD Form 149, Application for Correction of Military or Naval Records, to the Secretary of the Air Force through HQ AFMPC/MPCDOAI.

(4) If member was killed during the period of equivalent active military duty, the Assistant for Casualty and Mortuary Matters, Casualty Division (HQ AFMPC/MPCCA) will issue a DD Form 1300, Report of Casualty, including military pay grade, according to DODI 1300.9 (AFR 30–25, Casualty Services).

(e) *Application denial actions:* (1) If the Board determines that an application for discharge should be denied because there is insufficient evidence to show that the applicant was a member of a qualifying group, or if the Board determines that the applicant's service cannot be characterized at least under honorable conditions, HQ AFMPC/MPCDOAI notifies the applicant of the determination.

(2) The applicant has 60 days from the date of this notice to submit additional evidence or information to HQ AFMPC/MPCDOAI, Randolph AFB TX 78150, for the Board's consideration.

(3) After 60 days, the Board reviews the case again if additional evidence or information is submitted. If the Board determines that the application now merits approval, further action on the case follows as outlined in §881.6(d).

(4) If the applicant fails to submit additional evidence or information or if, after review, the Board determines that the application should be denied, the case is sent to the SAF/MIPC for final decision on the question of discharge and character of service.

(i) The Airman Actions Branch (HQ AFMPC/MPCDOA) notifies the applicant of the final decision and, if appropriate, issues the discharge documents.

(ii) An application that is denied is returned to the applicant, without prejudicing any later consideration.

(f) *Discharge upgrade.* If a General Discharge is approved, the recipient may apply to the Air Force Discharge Review Board for discharge upgrade under AFR 20–10 or to the Air Force Board for Correction of Military Records under AFR 31–3. HQ AFMPC/MPDOA will provide copies of these regulations and application forms to individuals who received a General Discharge.

§ 881.7 Disposition of documents.

(a) A copy of the application, supporting evidence, and DD Form 214 are filed permanently in the Master Personnel Records Groups maintained at the National Personnel Records Center, St. Louis MO 63132, for approved cases. Copies of DD Form 214 are also sent to the applicant, to the Veterans Administration, and to HQ AFMPC/MPCAKP, Randolph AFB TX 78150.

(b) A copy of each application is maintained at HQ AFMPC/MPCAKP for up to 3 years.

PART 884—MAKING MILITARY PERSONNEL, EMPLOYEES, AND DEPENDENTS AVAILABLE TO CIVILIAN AUTHORITIES FOR TRIAL

Sec.
884.0 Purpose.

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AUTHORITY: 10 U.S.C. 814; 10 U.S.C. 8013; Sec. 721(a), Pub. L. 100–456, 102 Stat. 2001.

SOURCE: 56 FR 1733, Jan. 17, 1991, unless otherwise noted.

§ 884.0 Purpose.

This part sets forth the authority, policy, and procedures for making Air Force military and civilian personnel as well as dependents available to U.S. civil authorities for trial, or specified court appearances. It implements 32 CFR part 146. It applies to all Air Force military personnel, including Reserve members while on active or inactive duty training, and Air National Guard members while in federal status under title 10, United States Code (U.S.C.), all Department of the Air Force (DAF) civilian employees (including non-appropriated fund (NAF) employees), and all dependents. This part establishes the policy that Air Force members, civilian employees, and dependents are expected to comply with valid orders of federal or state courts of competent jurisdiction. It is not applicable where a state, having jurisdiction for the purpose of executing criminal process, proceeds by service of process to take custody of a military member, employee or dependent without making a formal request for the individual's delivery. This part is not intended to confer any rights, benefits, privileges or form of due process procedure upon any individuals.

Subpart A—General Provisions

§ 884.1 Authority for delivery of Air Force military personnel.

Under Uniform Code of Military Justice, Article 14 (10 U.S.C. 814); Pub. L. 100–456, section 721(a); and the policy expressed in 32 CFR part 146 (DOD Directive 5525.9), a commander exercising general court-martial jurisdiction, or

an installation or support group commander when authorized by the officer exercising general court-martial jurisdiction, may authorize delivery of a member of his or her command to the civil authorities of the United States or of a state of the United States under the conditions prescribed in this part. An installation commander given authority to approve requests made pursuant to this part may delegate such approval authority to a commander of a combat support group, air base group, mission support squadron, or equivalent.

§884.2 Requests under the Interstate Agreement on Detainers Act.

The Interstate Agreement on Detainers Act (Act), 18 U.S.C. App. section 1 *et seq.*, is a compact entered into by most of the 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, and the United States. The Act applies to military prisoners and is implemented by this section. The purpose of the Act is to encourage the expeditions and orderly disposition of charges outstanding against a prisoner and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The Act provides a way for the prisoner to be tried on charges pending before state courts, either at the prisoner's request or at the request of the state where the charges are pending. When a request under the Act is received from either the prisoner or state authorities, the procedures set out in 18 U.S.C. App. section 1 *et seq.*, should be followed. 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.

§884.3 Release on bail or recognizance.

The civil authority to whom a military member is delivered under this part may release the member on bail or on the member's own recognizance before final disposition of the charges. In the event of such a release, the commander authorized to deliver the member, or his or her designee, must, before delivery, direct the member in writing to report to a designated Air Force unit, activity or recruiting office for further instructions (see §884.18). If the civil authorities to whom delivery was authorized are in the immediate vicinity of the member's base, the activity designated ordinarily will be the member's unit. The Air Force unit, activity, or recruiting office designated will be advised of this action by the commander taking this action. The authority to whom the member reports must communicate, by the fastest practicable means, the member's name, rank, SSN, organization, and other pertinent information to, and request disposition instructions from, the commander who authorized the delivery of the member to civil authorities, with an information copy to the HQ AFMPC assignment office responsible for the member's Air Force Specialty Code (AFSC), as listed in Air Force Regulation 36–20[1] or Air Force Regulation 39–11. If contact with such commander is not feasible, instructions must be obtained from HQ AFMPC/DPMARS or DPMRPP2.

§884.4 Placing member under restraint pending delivery.

A member may be placed under restraint (see Manual for Courts-Martial (MCM) 1984, Rule for Court-Martial (R.C.M.) 304, as to types of restraint available) by military authorities pending delivery to state or federal authorities. Such restraint may be imposed upon receipt of information establishing probable cause to believe that the member committed an offense, and upon reasonable belief such restraint is necessary. Such restraint may continue only for such time as is reasonably necessary to effect the delivery to civilian authorities. As to the type of analysis to be undertaken in determining whether probable cause exists and whether a reasonable belief exists that restraint is necessary, see MCM 1984, R.C.M. 305(h)(2)(B), and its following discussion. There is no requirement for the formal review of restraint provided in MCM 1984, R.C.M. 305, Air Force Regulation 111–1.

[1] Air Force publications are available through NTIS, 5285 Port Royal Road, Springfield, VA 22161.

§ 884.5 Returning members, employees, and dependents from overseas who fail to comply with court orders or custody decrees or who are sought for parental kidnapping.

Persons overseas who are wanted by state or federal authorities are expected to make themselves available to those authorities for proper disposition. If this does not occur, 32 CFR part 146, which implements 10 U.S.C. 814 and Pub. L. 100–456, section 721(a), authorizes and requires commanders to respond promptly to request from civil authorities for assistance in returning members, civilian employees, and dependents from overseas (subpart C of this part).

Subpart B—Requests by Authorities for Military Personnel Stationed Within the United States and its Possessions

§ 884.6 Policy on delivery.

When such authorities request the delivery of service members, it is Air Force policy normally to deliver service members when the request is accompanied by a warrant issued pursuant to the Federal Rules of Criminal Procedure, Rule 4, or when the appropriately identified federal officer represents that such a warrant has been issued (MCM 1984, appendix 3).

§ 884.7 Delivery to Federal authorities.

Persons desired by the federal authorities for trial will be called for, and taken into custody by, a U.S. marshal, deputy marshal, or other officer authorized by law. The officer taking custody must execute a statement in substantially the following form:

A warrant for the arrest of (name, grade, and social security number), hereinafter referred to as the ''member,'' who is charged with (offense), has been issued by (name of issuer), and in execution thereof, I accept his or her custody.

The commander (Unit), will be advised of the disposition of the charges. The member will be immediately returned to the custody of the Air Force at (Air Force activity or recruiting office nearest place of trial) upon completion of the trial if acquitted, upon satisfying the sentence imposed if convicted, or upon other disposition of the case. The member's return will not be required if the member's commander has indicated that return is not appropriate. 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.

§ 884.8 Requests by authorities of the state in which the member requested is located.

(a) *Policy on delivery.* It is Air Force policy normally to turn over to the civilian authorities of the state, upon their request, Air Force members charged with an offense against civil authority. There ordinarily will be required with each request by the state authorities for the surrender of a member of the armed forces, a copy of an indictment, information, or other document used in the state to prefer charges.

(b) *Delivery to state authorities.* Before making delivery to civil authorities of a state, the commander having authority to deliver will obtain from the Governor or other duly authorized officer of such state, a written agreement substantially in the following form:

In consideration of the delivery at (location) of (name, grade, and social security number), hereinafter referred to as the ''member,'' to me (name and capacity), for trial upon the charge of (offense), I, pursuant to the authority vested in me as (position), hereby agree to the following:

The commander, (unit), will be advised of the disposition of the charges. The member will be immediately returned to the custody of the military upon completion of the trial if acquitted, upon satisfying the sentence imposed if convicted, or upon other disposition of the case. The member's return will be to the aforesaid place of delivery, or to such other place as may be designated by the Department of the Air Force. 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. Pending dispositon 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.

Where, under the laws of the state concerned, no authority exists permitting agreement to one or more of the conditions set

out in the form, the commander may authorize modification. This agreement is substantially complied with when the Air Force authority who delivered the accused is informed of his or her prospective release for return to military authorities, and when the individual is furnished transportation back to his or her station together with necessary funds to cover incidental expenses enroute thereto. Copies of the statement or agreement referenced above, and in §884.7, will be furnished to the civil 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 (§884.3). The commander, who authorized delivery to civil authority or designee, will immediately notify the civil authority if the return of the member to Air Force custody is no longer required (e.g., discharge from the Air Force).

§884.9 Request for delivery by authorities of any state in which the member requested is not located.

This section applies to requested members who are not located overseas. With respect to the extradition process, Air Force ed Force personnel have the same status as persons not in the Armed Forces. Accordingly, if the delivery of a military member is requested by a state other than the state in which the member is located, the requesting state will be required, in the absence of a waiver of extradition process by the member concerned, to use its extradition procedures and to make arrangements to take the individual into custody in the state where he or she is located. It is contrary to Air Force policy to transfer a military member from a base within one state to a base within another state for the purpose of making him or her amenable to prosecution by civil authorities.

Subpart C—Requests for Custody of Members Stationed Outside the United States

§884.10 Air Force policy.

(a) Air Force members are expected to comply with orders issued by a 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 AFRs 36–2 and 39–1.[2] Such action is taken to improve discipline and maintain the standards of conduct expected of Air Force members, but not for the purpose of enforcing private civil obligations.

(b) Air Force officials will ensure that members do not use assignments or officially sponsored residence outside the United States to avoid complying with valid orders of a federal or state court of competent jurisdiction.

(c) 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/JACM and 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.

(d) When federal, state or local authorities request delivery of an Air Force member who is stationed outside the United States and who is convicted of or is charged by such authorities with a felony or other serious offense punishable by confinement for more than one year under the laws of the requesting jurisdiction, 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, the member normally will be expeditiously returned to the United States for delivery to the requesting authorities. Delivery of the member is not required if the controversy can be resolved without returning the member to the United States, or the request for delivery of the member is denied in accordance with this subpart.

(e) An Air Force member stationed outside the United States ordinarily will not be returned to the United States for delivery to civilian authorities in connection with an offense not enumerated in paragraph (d) of this section, but The Judge Advocate General (TJAG) may direct return in such

[2] See footnote 1 in §884.3.

cases when TJAG determines that the best interests of the Air Force require it.

(f) Before action is taken under this subpart, the member will be afforded 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.

§ 884.11 Assigned responsibilities.

(a) The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) 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 § 884.10(d) of this subpart.

(b) The Judge Advocate General (TJAG) of the Air Force may approve requests which fall under § 884.10(d) of this subpart, or recommend denial of such requests. TJAG or his 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 § 884.10(e) of this subpart.

(2) Requests for delays of up to 90 days in completing action on requests for return of members to the United States for delivery to civilian authorities.

(c) The Military Justice Division (HQ USAF/JAJM) is responsible for the timely processing of requests for return of members to the United States for delivery to civilian authorities, and for notifying requesting authorities of decisions on requests. Action on a request will be completed within 30 days after receipt of the request by HQ USAF/JAJM, unless a delay is granted. HQ USAF/JAJM also is responsible for all reports and notifications to ASD (FM&P) and General Counsel, DOD (DOD/GC), as required by this part. HQ USAF/JAJM will conduct all communications with requesters.

§ 884.12 Procedures for return of an Air Force member to the United States.

(a) A request for return of an Air Force member to the United States for delivery to civilian authorities shall:

(1) Fully identify the member sought. Requesting agencies shall provide the members' name, grade, social security number (SSN), and unit of assignment, to the extent that information is known.

(2) Specify the offense for which the member is sought. If the member is charged with a crime, the request shall specify the maximum punishment under the laws of the requesting jurisdiction. If 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, the request should so specify.

(3) Include copies of all relevant indictments, informations, or other instruments used to bring charges, all relevant court orders or decrees, and all arrest warrants, writs of attachment or capias, or other process directing or authorizing the requesting authorities to take the member into custody. Reports of investigation and other material concerning the background of the case shall be included, if reasonably available.

(4) State that the requesting authorities will initiate appropriate action to secure the member's lawful delivery or extradition from the port of entry to the requesting jurisdiction, at the expense of the requesting authorities, and that they will notify HQ USAF/JAJM of the member's release from custody and the ultimate disposition of the matter.

(5) Be signed by a United States Attorney or Assistant U.S. Attorney, by the Governor or other duly authorized officer of a requesting state or local jurisdiction, or by the judge, magistrate or clerk of a court of competent jurisdiction.

(b) Requests for return of members to the United States for delivery to civilian authorities shall be directed to HQ USAF/JAJM, Bolling AFB, DC 20332–6128. Requests received by any other Air Force agency or official must be sent to HQ USAF/JAJM by the most expeditious available means.

(c) Upon receipt of a request, HQ USAF/JAJM will promptly notify the members' commander, who will consult with his or her servicing staff judge advocate and provide to HQ USAF/JAJM,

through command channels, a report of relevant facts and circumstances and recommended disposition of the request. If the commander recommends denial of the request, or a delay in processing or approving it, he or she will provide the information specified in §884.13 or §884.14 of this subpart.

(d) When a request for return of a member to the United States for delivery to civilian authorities has been approved, HQ USAF/JAJM will notify AFMPC of the decision to return a member to the United States under this subpart. AFMPC will issue permanent change of station (PCS) orders assigning the member to an installation as close to the requesting jurisdiction as possible, in light of the needs of the Air Force for personnel in the member's grade and AFSC.

(e) The requesting authorities will be notified concerning the member's new assignment, port of entry into the United States, and estimated time of arrival. Absent unusual circumstances, this notification will be made at least 10 days before the member's return.

§884.13 Delays in returning members to the United States.

(a) A delay of not more than 90 days in completing action on a request to return a member to the United States for delivery to civilian authorities may be granted when:

(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 show legitimate cause for noncompliance.

(3) Additional time is required to permit the commander to determine and present the specific effect of the loss of the member on command mission and readiness, or 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) HQ USAF/JAJM will promptly report all delays in cases falling under §884.10(d) of this subpart, through SAF/GC and SAF/MI ASD(FM&P), and to DOD/GC.

(c) Delays in excess of 90 days are not authorized in cases falling under §884.10(d) of this subpart, unless approved by ASD (FM&P).

§884.14 Denials of a request for return of a member to the United States.

(a) Denial of a request for return of a member to the United States for delivery to civilian authorities may be justified when:

(1) The member's return would have an adverse impact on operational readiness or mission requirements.

(2) The member's return is precluded by an applicable international agreement.

(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 has shown satisfactory evidence of legal efforts to resist the request or other legitimate cause for noncompliance.

(5) Other unusual facts or circumstances warrant a denial.

(b) Commanders shall promptly send to HQ USAF/JAJM information suggesting that denial may be appropriate. In cases warranting denial, TJAG will promptly send a recommendation and supporting documentation, through SAF/GC and SAF/MI, to ASD(FM&P) 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 part, but TJAG may consider a pending request for denial in determining whether to grant a delay.

Subpart D—Compliance with Court Orders by Civilian Employees and Dependents

§884.15 Policy on complying.

(a) Air Force civilian employees and dependents are expected to comply with orders issued by a 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 AFRs 40–7, 40–735, 40–750, and 147–15.[3] Such action is taken to improve discipline and maintain the standards of conduct expected of Air Force employees, but not for the purpose of enforcing private civil obligations.

(b) Air Force officials will ensure that civilian personnel and dependents do not use assignments or officially sponsored residence outside the United States to avoid complying with valid orders of a federal or state court of competent jurisdiction.

(c) 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/JACM, and 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.

§ 884.16 Procedure involving a request by federal or state authorities for custody of an overseas civilian employee or a command sponsored dependent.

(a) The procedures of this subpart apply to the following persons:

(1) Civilian employees, including nonappropriated fund instrumentality (NAFI) employees, who are assigned outside the United States.

(2) Dependents residing outside the United States.

(b) This subpart applies only when Air Force authorities receive a request for assistance (see § 884.12 of this part) from federal, state or local authorities involving noncompliance with a court order and noncompliance is the subject of any of the following: an arrest warrant; an 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) Commanders will comply with requests to the maximum extent possible consistent with operational readiness, mission requirements, provisions of international agreements and foreign court orders, DOD and military department investigations, and courts-martial. If, after all reasonable efforts have been exhausted (see § 884.13 of this part), the matter cannot be resolved without the employee or dependent returning to the United States, then the commander shall:

(1) Strongly encourage the individual to comply; and,

(2) Consider imposing disciplinary action (including removal) against the employee or withdrawing command sponsorship of the dependent, as appropriate, for failure to comply.

§ 884.17 Reporting requests for assistance and action.

The commander or designee will report promptly by message each request for assistance and intended action. Send reports to HQ USAF/JAJM, who in turn will submit required reports through channels to ASD(FM&P). HQ USAF/JAJM will conduct all communication with requesters.

§ 884.18 Format letter.

SUBJECT: Instructions in Case of Release on Bail or Recognizance.

1. You are being released to the custody of civil authorities under the provisions of AFR 111–11. This action does not constitute a discharge from the Air Force. If you are released from civil 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, grade, SSN, organization, the circumstances of your release from custody, and the contents of this letter, including the Note below.

2. Certain restrictions may be placed upon you by the civil authorities in connection with your temporary release from custody. Be certain to include in your report what these limitations are.

(Signature element)

NOTE: Section 884.3 provides that the authority to whom you will report will advise the commander who authorized your delivery to civil authorities, or if that is not possible, HQ AFMPC/DPMARS or DPMRPP2, by the fastest means available. Your name,

[3] See footnote 1 in § 884.3.

grade, SSN, organization, and other pertinent circumstances will be provided and further instructions will be requested.

PART 887—ISSUING OF CERTIFICATES IN LIEU OF LOST OR DESTROYED CERTIFICATES OF SEPARATION

Sec.
887.0 Purpose.
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887.3 Persons authorized CILs.
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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 888–888f [RESERVED]

PART 888g—ORGANIZATIONAL AND REPRESENTATIONAL ACTIVITIES OF MILITARY PERSONNEL

Sec.

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888g.11 Air Force installations where provisions of this part have been invoked by the Secretary of the Air Force. [Reserved]
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888g.13 Reporting format.
888g.14 Situational guidance for commanders.

AUTHORITY: Sec. 8012, 70A Stat. 488 (10 U.S.C. 8012).

SOURCE: 43 FR 4605, Feb. 3, 1978, unless otherwise noted.

§888g.1 Purpose.

This part establishes policies and guidelines for dealing with individuals and organizations whose objective is to organize or represent military members of the Air Force for the purpose of negotiation or collective bargaining over terms or conditions of military service, prohibits Air Force commanders and supervisors from engaging in negotiation or collective bargaining, and prohibits military personnel from engaging in strikes and other concerted activities, on-base recruitment, and active membership in organizations which would engage in such activities.

§888g.2 Applicability.

(a) This part does not modify or diminish the existing authority of commanders to control access to, or maintain good order and discipline on, military installations; nor does it change or lessen the obligations of commanders and supervisors pursuant to Executive Order 11491 with respect to organizations representing Department of the Air Force civilian employees.

(b) This part applies to all active duty military personnel, members of Reserve components on inactive duty training, civilian employees, and to individuals and groups entering, using or seeking to enter or use Air Force installations. Violations of the specific prohibitions of this part by military members of the Air Force may result

in prosecution under the UCMJ or administrative action.

(c) This part implements DOD Directive 1354.1, Relationships With Organizations Which Seek to Represent Members of the Armed Forces in Negotiation or Collective Bargaining, October 6, 1977.

§ 888g.3 Policy on unionization of military personnel.

(a) The mission of the Air Force is to safeguard the security of the United States. The Air Force must be ready to execute its responsibilities in supporting that role with absolute reliability and immediate responsiveness. Essential to maintaining this state of readiness are the military requirements of control, discipline, and prompt obedience to lawful orders of command. The chain of command must remain unencumbered by outside influence or obstruction of authority.

(b) The Air Force recognizes the important contributions which organized labor has made to the social and economic development of our nation. Civilian labor unions are an integral part of everyday Air Force activities. However, the traditional union functions of collective or concerted actions would impair the control of Air Force commanders over military personnel so as to threaten the security of the United States. Air Force commanders could not maintain readiness, be responsive to contingency plans or accomplish their missions if required to bargain over their orders, consult over decisions, or be subject to collective actions of any sort.

(c) Any individual or organization which seeks to intrude on the relationship between commanders and military members of the Air Force in matters relating to mission accomplishment or terms or conditions of military service, presents a clear danger to discipline, loyalty, and obedience to lawful orders of command and such interference will not be permitted.

§ 888g.4 Explanation of terms.

(a) *Aid and abet* means to be present during the commission of any act prohibited by this regulation and to assist, command, counsel or otherwise encourage such an act.

(b) *Air Force installation* includes bases, stations, sites, aircraft and other facilities where Air Force personnel are assigned.

(c) *Civilian employee* includes Executive Schedule, Scientific and Technical, General Schedule, Wage Board, and Nonappropriated Fund employees of the Air Force.

(d) *Collective job-related action* means any activity by two or more persons that is intended to and does obstruct or interfere with the performance of a military duty assignment.

(e) *Conspire* means to join or agree with one or more persons to commit any act prohibited by this part.

(f) *Installation commander* means the senior host wing or equivalent commander. Major commanders may designate the commander of a higher level organization to enforce the provisions of this part when two or more organizations of the host command are located at the same installation.

(g) *Military member* includes Air Force personnel on active duty or inactive duty training and members of the Air National Guard of the United States and United States Air Force Reserve while serving in a military capacity.

(h) *Negotiation or collective bargaining* is a process whereby a commander or supervisor, military or civilian, acting on behalf of the United States, engages in discussions with a military member or members of the Air Force (purporting to represent such members), or with an individual group, organization, or association purporting to represent such members, for the purpose of resolving bilaterally, terms or conditions of military service.

(i) *Solicit* means to use words or any other means to request, urge, advise, counsel, tempt or command another to commit any act prohibited by this part.

(j) *Terms or conditions of military service* means terms or conditions of military compensation or duty including but not limited to wages, rates of pay, duty hours, assignments, grievances, or disputes.

§888g.5 Activities prohibited in the Air Force.

(a) *Negotiation or Collective Bargaining.* Air Force commanders and supervisors will not engage in negotiation or collective bargaining.

(b) *Strikes and Other Concerted Activities.* Military members of the Air Force will not:

(1) Engage in any strike, slowdown, work stoppage, or other collective job-related action with respect to terms or conditions of military service, or

(2) Picket for the purpose of causing or coercing other military members of the Air Force to engage in a strike, slowdown, work stoppage, or other collective job-related action related to terms or conditions of military service.

(c) *Recruitment Efforts.* (1) No person will conduct or attempt to conduct a demonstration, meeting, protest, march, or engage in or attempt to engage in speechmaking, picketing, leafleting, or other similar activity on an Air Force installation for the purpose of forming, recruiting military members for, or soliciting money or services for any organization that:

(i) Engages or is substantially likely to engage in any activity prohibited by this part; or

(ii) Proposes or holds itself out as proposing to engage in negotiation or collective bargaining on behalf of military members of the Air Force; or

(iii) Proposes or holds itself out as proposing to represent military members of the Air Force to the military chain of command with respect to the terms or conditions of military service when such representation would interfere with the military chain of command; or

(iv) Solicits or aids and abets a violation of this regulation by a military member of the Air Force.

(2) No person will engage in any activity, including but not limited to individual contacts or the posting for public display of any poster, handbill or other writing, on any part of an Air Force installation if the activity or the material displayed constitutes or includes an invitation to collectively engage in an activity prohibited by this part.

(d) *Membership in Certain Organizations.* Military members of the Air Force will not become or remain members of an organization under the following conditions:

(1) After the Secretary of the Air Force determines in accordance with §888g.10 that the organization presents a clear danger to discipline, loyalty or obedience to lawful orders; and

(2) The military members know the Secretary has made such determination, and

(3) The military members intend to promote the conduct upon which the determination is based, and

(4) The military members actively participate in activities of the organization.

(e) *General Prohibitions.* Military members of the Air Force will not attempt to engage in, or solicit the commission of, or conspire with, or aid and abet any person or organization in the commission of any act prohibited in this part.

§888g.6 Permissible activities.

This part does not prevent:

(a) Military members from presenting complaints or grievances over terms or conditions of military service through established military channels.

(b) Commanders or supervisors from giving due consideration to the views of military members presented individually or as a result of participation on command-sponsored or authorized advisory councils, committees, or organizations for the purpose of improving conditions or communications at the Air Force installation involved.

(c) Military members from petitioning Congress or communicating with any member of Congress.

(d) Military members from being represented by qualified counsel, whether or not retained by an organization on his or her behalf, in any judicial or administrative proceeding with respect to which there is a right to counsel of choice.

(e) Military members from joining or being a member of any organization which engages in representational activities with respect to terms or conditions of off-duty employment.

(f) Civilian employees from joining or being a member of any organization

that engages in representational activities with respect to terms or conditions of civilian employment.

§ 888g.7 Responsibilities.

(a) The Secretary of the Air Force is responsible for making determinations as required by § 888g.5(c)(2) and 888g.5(d)(1), and for the selective application of such determinations to particular Air Force installations on a case-by-case basis. Guidelines for making these determinations are contained in § 888g.10. Section 888g.11 lists those Air Force installations where selective application has been invoked by the Secretary of the Air Force. Section 888g.12 lists those organizations which have been determined to present a clear danger to discipline, loyalty, or obedience to lawful orders of command.

(b) Installation commanders:

(1) Are responsible for enforcement of § 888g.5 (a), (b), (c)(1), and (e), which automatically apply to all personnel and § 888g.5 (c)(2) and (d)(1) after a determination is made by the Secretary of the Air Force.

(2) Will gather the facts and data needed by the Secretary of the Air Force to make determinations required by this part. The limitations on obtaining information on persons or organizations not affiliated with the Department of Defense imposed by part 954 of this chapter will be strictly complied with.

(3) Will report through intermediate commanders to their major commander, with information to HQ USAF/DPXX/JACM, Pentagon, Washington, DC, all incidents concerning requests for permission or attempts to engage in activities prohibited by this part. The checklist/form at § 888g.13 will be utilized for submitting these reports.

(4) Will post notices of the determinations made by the Secretary of the Air Force affecting their installation which clearly state:

(i) That the identified organization poses a clear danger to discipline, loyalty, or obedience to lawful orders, including the reason upon which the determination is based, and

(ii) That knowing, active membership in that organization by a military member with the intent to promote such prohibited conduct is not permitted.

(c) Intermediate commanders will resolve incidents or provide guidance to installation commanders as appropriate, or request assistance or additional guidance from HQ USAF/DPXX/JACM. HQ USAF/DPXX/JACM will be an information addressee on all correspondence and messages concerning activities addressed by this part and reports of guidance and action taken.

(d) HQ USAF/DPXX/JACM is the Air Staff focal point for activities related to this part, and will provide staff support to the Secretary of the Air Force in making determinations required by this part.

(e) Air Force officers and noncommissioned officers, especially unit commanders, senior enlisted advisors and first sergeants, are responsible for insuring that Air Force personnel are aware of the policies, rights and responsibilities expressed herein, and all personnel are responsible for assisting installation commanders in identifying incidents and/or conduct prohibited by this part.

§ 888g.8 Situational guidance.

To assist installation and intermediate commanders in dealing with activities prohibited by this part, guidance for typical situations is provided in § 888g.14. This guidance is for example only and is not intended to override the judgment of individual commanders or the advice of their staff judge advocates.

§ 888g.9 Military union incident, RCS HAF–DPX(AR) 7701.

The reports specified in § 888g.7(b)(3) will be furnished as required to HQ USAF/DPXX/JACM. The reports will be submitted by electrical message in the format of § 888g.13. During periods when MINIMIZE is imposed, commanders will consider the severity of the activity in approving electrical transmission.

§ 888g.10 Guidelines for making determinations.

This part requires that certain determinations be made on the basis of facts that exist at particular installations.

The guidelines for making these determinations are:

(a) A person or organization poses a clear danger to the discipline, loyalty, or obedience to lawful orders when the person or organization, or any person on behalf of the organization, engages in, solicits, or aids and abets any act prohibited by this part, or violates or conspires to violate 18 U.S.C. 1382, or solicits or aids and abets a violation of Articles 82, 85, 86, 87, 89, 90, 91, 92, 94, 108, 109, 115, 116, 117 or 128 of the Uniform Code of Military Justice. In making this determination, the history and operations of the organization (including the constitution and bylaws, if any) or person in question may be evaluated along with evidence with respect to the conduct constituting a prohibited act. In addition, there must be sufficient evidence to support a conclusion that the person or organization is substantially likely to engage in a prohibited act.

(b) In determining whether commission of a prohibited act by individual members of an organization can be attributed to that organization, examples of factors which should be considered include: the frequency of such act; the position in the organization of persons committing such act; whether the commission of such act was known by the leadership of the organization; and whether the commission of such act was condemned or disavowed by the leadership of the organization.

(c) In determining whether individual contact or posting for public display of any poster, handbill, or other writing constitutes or includes an invitation to collectively engage in an act prohibited by this regulation, specific language of the conversation or written material will be considered. In the case of individual conversations, determinations will be sensitive to protection of First Amendment rights of free speech.

(d) In making the decision that a military member of the Air Force is an ''active'' member of the organization in question, membership must be more than merely nominal or passive. Normally a person can be considered an active member if he or she engages in certain kinds of conduct for the organization. This conduct includes solicitation or collection of dues, membership recruitment, distribution of literature, service as an officer of the organization, or frequent attendance at meetings or activities of the organization.

(e) In deciding that a military member knows about the prohibited conduct engaged in by the organization, such knowledge may be inferred if the notice specified in §888g.7(b)(4) has been properly posted.

(f) In deciding that a military member intends to promote the prohibited conduct engaged in by the organization, his or her conduct and/or participation in the organizational activities which constitute active membership will be considered.

§888g.11 Air Force installations where provisions of this part have been invoked by the Secretary of the Air Force. [Reserved]

§888g.12 Organizations determined by the Secretary of the Air Force to present a clear danger to Air Force discipline, loyalty or obedience to lawful orders. [Reserved]

§888g.13 Reporting format.

Priority Message

To: Intermediate Commanders and Majcom.
Info: HQ USAF/DPXX/JACM.
Subject: Military Union Incident, RCS HAF–DPX(AR) 7701.

A. Name of installation.

B. Type of incident (request or attempt for negotiation or collective bargaining, strike or other concerted action, solicitation or request for recruitment, distribution of literature, active membership, or other prohibited activity).

C. Name(s) of individual(s) or organization.

D. Narrative statement of incident.

E. Brief summary of constitution, bylaws, statement of purpose submitted by the individual or organization, or other information and the source to provide sufficient data for SECAF determination.

F. Summary of commander's action.

NOTE 1: Information and data gathered on persons or organizations not affiliated with the Department of Defense will be in accordance with AFR 124–13.

NOTE 2: During periods when minimize is imposed, commanders will consider the severity of the activity before approving electrical transmission.

§ 888g.14 Situational guidance for commanders.

RULE	A	B	C	D
	If the incident concerns	and	then the installation commander	and
1	an individual or organization that claims to represent military members of the Air Force	the purpose is for negotiation or collective bargaining over terms or conditions of military service	advises the individual or organization that he or she is prohibited from negotiating or collectively bargaining over terms or conditions of military service	reports the incident IAW §888g.13.
2	an individual or organization that requests permission to negotiate or collectively bargain on behalf of military members of the Air Force			denies the request and reports the incident IAW §888g.13.
3	an individual or organization that attempts to negotiate or collectively bargain on behalf of military members of the Air Force			reports the incident IAW §888g.13.
4	an organization that claims to represent military members of the Air Force threatens a strike, slowdown, work stoppage or other collective job-related action, or picket		advises the organization and all military personnel that they are prohibited from engaging in strikes, slowdowns, work stoppages, or other collective job-related actions, or picketing	
5	an organization that claims to represent military members of the Air Force engages in a strike, slowdown, work stoppage or other collective job-related action, or picket	the organization and military members have been advised that such activity by military personnel is prohibited	takes necessary action to return to normal operation	takes disciplinary action, when appropriate, against military members of the Air Force who engaged in prohibited activity, and reports incident IAW §888g.13.
6	an individual or organization that pickets for the purpose of causing or coercing military members of the Air Force to engage in a strike, slowdown, work stoppage or other collective job related action		takes necessary action to stop such activity on base	
7	an individual or organization that requests permission to conduct a demonstration, meeting or protest, or engage in speechmaking, picketing or leafleting, or other such activity	the purpose is to solicit military members of the Air Force to join an organization that participates, or is substantially likely to participate, in negotiation or collective bargaining, strikes or other concerted actions	denies the individual or organization access to the base and/or denies permission to conduct such activities	reports the incident IAW §888g.13.
8		the organization proposes or holds itself out as proposing to engage in negotiation or collective bargaining on behalf of military members of the Air Force		

RULE	A	B	C	D
	If the incident concerns	and	then the installation commander	and
9	an individual or organization that attempts to recruit military members of the Air Force on base for any organization	permission has not been requested	directs individuals or organizations to cease and desist and removes violators from the base	reports the incident IAW §888g.13.
10		permission was previously requested but denied		takes disciplinary action, when appropriate, and reports incident IAW §888g.13.
11	an individual or organization that conducts recruiting of military personnel for any organization and the method is by such techniques as individual contacts or posting of any poster, handbill or other writing for public display	such contact or posting constitutes or includes an invitation to engage in negotiation or collective bargaining, or a strike or other concerted action	denies access to the base or removes violators and prohibits further contact, posting or distribution of such material pending determination by SECAF (see note)	reports the incident IAW §888g.13.
12		SECAF makes determination that the organization poses a clear danger to discipline, loyalty, or obedience to lawful orders	posts the notice required by paragraph 5b(4).	
13	an individual or organization that attempts on-base distribution of literature	permission has not been requested	halts distribution and reviews the literature to determine whether it constitutes a clear danger to discipline, loyalty or morale IAW AFR 35-15.	
14		the commander decides the material does not constitute a clear danger to discipline, loyalty or morale	permits distribution.	
15		the commander decides the material does constitute a clear danger to discipline, loyalty or morale	prohibits further distribution and advises distributor to cease and desist	reports the incident IAW §888g.13.
16		permission to distribute was previously denied	halts further distribution, confiscates available literature, and removes violators from the base	
17	an individual or organization that distributes literature soliciting membership or promoting an organization which purports or proposes to represent military members in negotiation or collective bargaining	distribution is through the US Mail	takes no action	

RULE	A	B	C	D
	If the incident concerns	and	then the installation commander	and
18	a military member who asks about the legality of joining a union or other organization		advises member active membership is prohibited in organizations that violate AFR 30-24 when the member knows the organization engages in prohibited conduct and the member intends to promote such conduct	further advises member that it is permissible to belong to an organization which engages in representational activities with respect to terms or conditions of off-duty employment.
19	a military member who joins a labor organization for representation not related to off-duty employment	SECAF has not made a determination that the organization presents a clear danger to discipline, loyalty or obedience to lawful orders	gathers information on subject organization IAW AFR 124-13	reports the information IAW §888g.13 (see NOTE).
20		SECAF has made determination that the organization poses a clear danger and enters it on atch 3	posts notice IAW §888g.7(b)(4).	
21		SECAF has made determination and Commander decides member knows determination has been made and is active participant in the organization's activities	takes disciplinary or administrative action, when appropriate,	reports the incident IAW §888g.13.
22	a military member who already belongs to a labor organization for representation not related to off-duty employment	SECAF has not made a determination that the organization presents a clear danger to discipline, loyalty or obedience to lawful orders	gathers information on subject organization IAW AFR 124-13	reports the information IAW §888g.13 (see NOTE).
23		SECAF has made determination that the organization poses a clear danger and enters it on atch 3	posts notice IAW §888g.7(b)(4).	
24		SECAF has made determination and Commander decides member knows determination has been made and is active participant in the organization's activities	takes disciplinary or administrative action, when appropriate	reports the incident IAW §888g.13.

NOTE: SECAF will make determination whether such individual or organization presents a clear danger to discipline, loyalty, or obedience to lawful orders of the Air Force. When SECAF makes affirmative determination and enters it on §888g.12, INSTALLATION commander posts notice IAW §888g.7(b)(4).

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.

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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 in-processing 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.

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AUTHORITY: 10 U.S.C. 8012, except as otherwise noted.

SOURCE: 44 FR 47929, Aug. 16, 1979, unless otherwise noted.

NOTE: This part is derived from Air Force Regulation 53–14, May 22, 1979.

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 Purpose.

This part tells how to apply for the Air Force Academy Preparatory School Program. It also explains the procedures for selection, disenrollment, and assignment.

NOTE: This part is affected by the Privacy Act of 1974. The systems of records prescribed here are authorized by Headquarters USAF (AFOMO 126) letter, April 11, 1969; and 10 U.S.C. 8012. Each form that is subject to AFR 12–35, paragraph 30, and is required by

this part has a Privacy Act Statement, either incorporated in the body of the document or in a separate statement accompanying the document.

§903.2 Preparatory school.

The mission of the United States Air Force Academy Preparatory School (USAFAPS) is to prepare and evaluate selected personnel for entrance into the Cadet Wing of the United States Air Force Academy. It provides indepth instruction in mathematics, English, and the basic sciences, to enable students to qualify for entering into the Cadet Wing.

§903.3 Yearly schedule.

Classes are conducted each year from July to early May. A limited number of Regular and Reserve airmen may be enrolled at appropriate times after the July starting date.

§903.4 School location.

The USAFAPS is located at the United States Air Force Academy near Colorado Springs, Colorado.

§903.5 Who is eligible.

To be eligible, USAFAPS candidates must:

(a) Be at least 17 years old and not have passed their 21st birthday by July 1 of the year to be admitted.

(b) Be a citizen of the United States.

(c) Be unmarried and have no dependent children.

(d) Be on extended active duty. Air Force Reserve or Air National Guard members may apply while not on extended active duty but must agree to a call to active duty if selected to attend. Air National Guard members selected to attend will be transferred to the Air Force Reserve prior to being called to active duty.

(e) Agree, if a Regular member of the Armed Forces, to extend his or her current enlistment, if the obligated tour of duty or enlistment contract expires prior to the date of preparatory school graduation.

(f) Be medically qualified for an appointment to the Air Force Academy.

(g) Achieve a satisfactory score on the Scholastic Aptitude Test (SAT) offered by the Educational Testing Service, or on the American College Testing (ACT) program tests, or on the Air Force Academy Selection Test.

(h) Have an acceptable academic record as determined by the Air Force Academy Director of Cadet Admissions.

(i) Not have previously attended a service academy preparatory school.

(j) Have received a nomination to the Air Force Academy, if a Regular member of the Army, Navy, or Marine Corps.

(k) Have completed Basic Training, if a Reserve airman entering after normal July entry date.

§903.6 When to apply.

(a) Regular and Reserve members of the Air Force must send a complete application to the Air Force Academy Director of Cadet Admissions not later than May 1.

(b) Regular members of the Army, Navy, or Marine Corps who are nominated for an appointment to the Air Force Academy must establish their eligibility for nomination by May 1.

§903.7 Application procedures.

(a) Regular and Reserve members of the Air Force must send the following through their organization commander and servicing CBPO (active duty only) to the Air Force Academy Director of Cadet Admissions.

(1) 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.

(2) A certified transcript from each high school, civilian preparatory school, or college that the applicant attended.

(b) Regular members of the Army, Navy or Marine Corps must request enrollment by sending a letter as shown in §903.14 to the Air Force Academy Director of Cadet Admissions through their organization commander.

(c) The organization commander is responsible for:

(1) Sending the following to the Air Force Academy Director of Cadet Admissions (for active duty Air Force personnel, the commander will send the completed application to the servicing CBPO):

(i) An AF Form 1786 for a Regular or Reserve member of the Air Force, or a letter requesting enrollment by a Regular member of the Army, Navy, or Marine Corps.

(ii) Certified transcripts from each high school, civilian preparatory school, or college attended by the applicant.

(iii) One copy of the applicant's most recent Airman Performance Report (AF Form 909 or 910, as applicable).

(iv) One copy of the applicant's Report of Individual Report (RIP).

(v) A recommendation for selection or nonselection which gives a full description of the applicant's character and suitability for the Preparatory School program and includes the following statement:

Information regarding component, length of service, and date of birth have been verified from official records.

(d) The servicing CBPO (for active duty personnel) is responsible for:

(1) Making sure that the applicant is assigned an Assignment Availability Code ''05'' IAW table 3–3, AFR 39–11.

(2) Sending the application to the Air Force Academy Director of Cadet Admissions.

§ 903.8 Selection procedures.

Applicants are selected for enrollment by the Air Force Academy on the basis of test scores, medical examination, prior academic record, recommendation of the organization commander, and other reports and records which indicate the applicant's aptitude, achievement, or ability to complete the program successfully.

§ 903.9 Notification of selection or nonselection.

(a) When applicable, the Air Force Academy Director of Cadet Admissions will send a notice of nonselection for Air Force personnel, to the applicant and the servicing CBPO.

(b) Upon receipt of a notice of nonselection, the servicing CBPO for Regular members of the Air Force will cancel the applicant's Assignment Availability Code 05.

(c) Upon selection of Air Force personnel to attend the USAFAPS, the Air Force Academy Director of Cadet Admissions will notify the Air Force Academy CBPO/DPMUM of the selectee's name, grade, SSAN, AFSC, and unit of assignment. The Air Force Academy CBPO will insure that the selectee is assigned to the USAFAPS, USAF Academy CO 80840.

(d) The Department of Defense Medical Examination Review Board (DODMERB) will notify applicants of their medical status.

(e) Air Force personnel entering the USAF Academy Preparatory School will enter in the highest active duty grade they held as of the date of entrance without change to DOR or effective date. Future promotions will be in accordance with AFR 39–29.

§ 903.10 Disenrollment.

Students may be disenrolled when the Commander of the Prep School determines that one or more of the following conditions exist:

(a) The student has failed to meet and maintain academic standards.

(b) The student has failed to demonstrate adaptability and suitability for the Air Force Academy academic, military, or physical training programs.

(c) The student's conduct is unsatisfactory.

(d) The student's retention in the program is not in the best interests of the government.

(e) The student marries.

(f) The student becomes medically disqualified for an appointment to the Air Force Academy.

(g) The student request disenrollment.

§ 903.11 Reassignment of students who are disenrolled or not offered an appointment to a service academy.

These students will be reported by USAFA/PL to USAFA/DPMU.

(a) Regular Air Force members will be reported by USAFA/DPMU to AFMPC/MPCRAC 3 for reassignment as follows:

(1) Name, grade, and SSAN.

(2) CAFSC, PAFSC, and any additional AFSCs.

(3) Former unit, base, and command of assignment.

(4) DOS.

(5) ODSD/STRD and last area of oversea assignment.

(6) Oversea volunteer status.

(7) Assignment preferences.

(8) Assignment deferment status.

(9) Reason for reassignment action.

(10) Statement as to the airman's possible appointment to another service academy.

(b) Air Force reservists are reassigned as follows:

(1) Reserve Air Force members called to active duty solely to attend the school will be discharged from the United States Air Force under the authority of this part and AFR 39–10.

(2) Reserve Air Force members previously assigned to a Reserve Unit will be released from active duty and reassigned to the Air Reserve Personnel Center under the authority of this part and AFR 39–10.

(3) Air National Guard members previously assigned to an ANG unit will be released from active duty and reassigned to the appropriate State Adjutant General under the authority of this part and AFR 39–10.

(c) Regular members of the other services will be reported as follows:

(1) Members of the Navy will be reported to the Officer-in-Charge, NAVUN Lowry, Colorado Springs Detachment, 801 Prospect Lake Drive, Colorado Springs CO 80901.

(2) Members of the Army will be reported as currently specified in AR 600–635.

(3) Members of the Marine Corps will be reported to MARTU, MARTC, Denver CO 80240.

§903.12 Reassignment of regular and reserve members of the Air Force and regular members of the Army, Navy, and Marine Corps who accept an appointment to a service academy.

(a) Regular and Reserve Airmen will be released from enlisted active duty and will be reassigned as active duty Air Force Academy cadets, to be effective on the date of entry into the Academy in accordance with:

(1) DAF Letter, ''Members of the Armed Forces Appointed to a Service Academy,'' July 8, 1957.

(2) 10 U.S.C. 516, 8201, 8203, 8205, and 8214.

(3) AFR 39–10.

(b) Records for Regular and Reserve members of the Air Force who enter the Air Force Academy will be retained by the Academy until the airman is commissioned or disenrolled. These members will not be issued DD Form 214, Report of Separation from Active Duty.

(c) Records for Regular Airmen who enter one of the other academies will be forwarded to AFMPC/MPCDOB for processing.

(d) Regular airmen who enter any of the three service academies will be required to sign the statement shown at §903.15.

(e) Regular members of the Army, Navy, or Marine Corps who enter the Air Force Academy will be reported to the appropriate service as shown in §903.11(c).

(f) HQ USAFA/DPMQS will publish relieved from active duty orders for USAF Academy Preparatory School students who are regular and reserve airmen and who, upon completion of the USAF Academy Preparatory School, accept appointments to a service academy.

§903.13 Reserve enlistment procedures.

The enlistment into the Air Force Reserve of civilian selectees for the USAF Academy Preparatory School will be accomplished as follows:

(a) The Office of Cadet Admissions and Registrar (RRS), USAF Academy, CO, will send to each selectee a DD Form 1966, Application for Enlistment-Armed Forces of the United States, with instructions for its completion. The selectee will be instructed to send the completed DD form 1966 to HQ ARPC/DPRPP, Denver CO 80280. A preaddressed envelope will be provided for this purpose.

(b) Upon receipt of the completed DD Form 1966, HQ ARPC/DPRPP will review the form for completion and acceptance of the applicant for enlistment.

(c) If the applicant is acceptable for enlistment, HQ ARPC/DPRPP will complete a DD Form 4, Enlistment or Reenlistment Agreement—Armed Forces of the United States, for each applicant.

(d) HQ ARPC/DPRPP and the USAF Academy Preparatory School will be responsible for administering the oath

of enlistment for each applicant. This oath is administered on the date of inprocessing at the USAF Academy Preparatory School, and the effective date of enlistment is the date the applicant took the oath.

(e) HQ ARPC/DPRPP will publish Reserve Orders placing the applicant on active duty for the purpose of attending the USAF Academy Preparatory School. The school will determine the date of call to active dute (usually, this is the date the applicant was administered the oath of enlistment). HQ ARPC/DPRPP will give copies of the orders to the CBPO/DPMA, USAF Academy CO 80840 on the date of inprocessing.

§ 903.14 Sample letter.

Subject: Application To Attend Air Force Academy Preparatory School.
Thru: Organization Commander.
To: USAFA/RRS USAF Academy CO 80840.

1. I hereby apply under the provision of AFR 53–14 to attend the Air Force Academy Preparatory School for Air Force Academy candidates.

1. (Use appropriate sentence(s) listed below):

a. I have been nominated by (indicate name of Senator/Representative) for appointment to the Air Force Academy.

b. I have applied for candidacy to the Air Force Academy under the following competition(s) (list those that apply)

Presidential.

Sons or Daughters of Deceased or Disabled Veterans.

Sons or Daughters of Medal of Honor Recipients.

3. (Use appropriate sentence(s) listed below):

a. My academic transcripts are attached.

b. My academic transcripts are being requested from the appropriate school officials. They will mail them to the Director of Cadet Admissions, USAFA/RRS. I last attended (name of high school, college, or preparatory school), (address of school).

4. I was born on (day) (month) (year). My present enlistment expires (day) (month) (year).

NAME, Grade, Branch of Service.
SSAN.
Organization.
Location.
Telephone No.

NOTE: To be used only by military nominee—see § 903.7(b) (Army, Navy, and Marine Corps only) (Regular and Reserve Air Force applicants must use AF Form 1786).

§ 903.15 Statement.

Upon acceptance as a Cadet in the _____ Academy, effective _____ I understand that in accordance with the provisions of Pub. L. 614, 84th Congress, should my appointment be terminated for reasons other than acceptance of a commission in a Regular or Reserve component of the Armed Forces, or for physical Disability, I will revert to my former enlisted or inducted status in effect immediately prior to acceptance of appointment as a cadet in the _____ for the purpose of completing any remaining active and inactive service required under my enlistment contract or my service obligation under the Universal Military Training and Service Act, or both, as appropriate. I further understand that any time served as a Cadet shall be counted as time served under my enlistment contract or period of obligated service, or both, as appropriate.

SUBCHAPTERS L—M [RESERVED]
SUBCHAPTER N—TERRITORIAL AND INSULAR REGULATIONS

PART 935—WAKE ISLAND CODE

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AUTHORITY: Sec. 48, Act of 12 July 1960; 74 Stat. 424; Pub. L. 86–624; E.O. 11048, Sept. 1, 1962, 27 FR 8851 and agreement between the Department of Interior and Department of the Air Force dated 19 June 1972, 37 FR 12255.

SOURCE: 37 FR 12384, June 23, 1972, 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.

§ 935.3 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;

(d) A judicial system for Wake Island not otherwise provided for.

§ 935.5 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 Air Force Base or a successor in command at Wake Island.

(c) *He* includes the masculine or feminine gender.

(d) *Judge* includes judges of the Wake Island Court and Court of Appeals.

§ 935.7 Effective date.

This part is effective at 0000 June 25, 1972.

Subpart B—Executive Authority

§ 935.11 Designation and delegation of authority.

The executive authority at Wake Island is vested in the Secretary of the Air Force. This authority is hereby 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. The Commander, Wake Island Air Force Base is the agent of the Secretary, his delegate and designees in carrying out any function, power or duty under this part.

§ 935.13 Permits.

Permits in effect on the effective date of this part continue in effect until revoked or rescinded by the Commander. The Commander may issue island permits or registration for:

(a) Businesses, including any trade, profession, calling, or occupation, and any establishment where food or beverages are prepared, offered, or sold for human consumption.

(b) Self-propelled motor vehicles, except aircraft; including attached trailers.

(c) Vehicle operators.

(d) Boats.

(e) Dogs.

(f) Food handlers.

(g) Explosives and guns and pistols (including those operated by air, gas, or spring).

(h) Drugs, narcotics, and poisons.

(i) Construction.

(j) Burials.

(k) Any permit or registration issued pursuant to Air Force regulations or directives as applicable to Wake Island Air Force Base shall constitute a permit or registration under this section, and no other permit or registration shall be required.

§ 935.15 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) Deputize any person to serve as a Peace Officer;

(g) Impose quarantines;

(h) Direct the impoundment and destruction of unsanitary food, fish, or beverages;

(i) Direct the evacuation of any person from a hazardous area;

(j) Commission notaries public;

(k) Establish and maintain a facility for the restraint or confinement of persons and provide for their care;

(l) Direct the removal of any person from Wake Island for cause;

(m) Issue traffic regulations that are not inconsistent with this part, and post traffic signs;

(n) 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;

(o) 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

(p) Issue any order or notice necessary to implement this section. Any order or notice issued pursuant to Air Force regulations and directives as applicable to Wake Island Air Force Base shall constitute an order or notice issued pursuant to this section.

§935.16 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 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.

§935.17 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.

§935.18 Notaries public.

(a) The Commander may commission one or more residents of Wake Island as notaries public.

(b) Persons applying for commission as a notary public 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 $10 which shall be deposited in the Treasury as a miscellaneous receipt.

(c) Upon 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 $3.

§935.19 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

§935.21 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.

§ 935.23 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 Hawaii apply to persons on Wake Island.

Subpart D—Criminal Law

§ 935.31 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

§ 935.41 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 18 years of age, without the permission of that person's parent or guardian;

(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; or

(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, solicit, picket, or parade in any public place or area where prohibited by the Commander pursuant to § 935.15.

[37 FR 12384, June 23, 1972; 37 FR 13175, July 4, 1972]

Subpart F—Penalties

§ 935.51 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.

§935.53 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.

[37 FR 12384, June 23, 1972, as amended at 37 FR 14567, July 21, 1972]

§935.55 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.

§935.57 Contempt.

Judges of the Wake Island Court 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 Court.

(a) The judicial authority at Wake Island is vested in the Wake Island Court.

(b) The Wake Island Court consists of a Chief Judge and four Associate Judges, appointed by the General Counsel, for a term of 1 year. The Chief Judge assigns matters to judges, determines whenever the Court sits individually or en banc, and prescribes rules of the Court not otherwise provided for in this Code.

(c) Sessions of the Court are held on Wake Island at times and places designated by the Chief Judge.

§935.61 Island Attorney.

There is an Island Attorney, appointed by the General Counsel for a term of 1 year. The Island Attorney represents the United States in the Wake Island Court and in the Wake Island Court of Appeals.

§935.62 Public Defender.

There is a Public Defender, appointed by the General Counsel for a term of 1 year. The Public Defender represents any person charged with an offense under this Code who requests representation.

§935.63 Clerk of the Court.

There is a Clerk of the Court, who is appointed by the Chief Judge. The Clerk maintains a public docket containing such information as the Chief Judge may prescribe, and performs such other duties as the Court may direct.

§935.64 Jurisdiction.

(a) The Wake Island Court has jurisdiction over all offenses under this Code 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, change 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.

§935.65 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 one Associate Judge, appointed by the General Counsel for a term of 1 year. 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 Code.

(c) Sessions of the Court of Appeals are held in Washington, DC, at times and places designated by the Chief Judge.

§ 935.66 Clerk of the Court of Appeals.

There is a Clerk of the Court of Appeals, who is appointed by the Chief Judge. The Clerk maintains a public docket containing such information as the Chief Judge may prescribe, and performs such other duties as the Court directs.

§ 935.67 Jurisdiction of the Court of Appeals.

The Court of Appeals has jurisdiction over all appeals from the Wake Island Court. Decisions of the Court are final.

§ 935.68 Qualifications.

(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, District, or Territory.

(b) Civilian officers and employees of the Department of the Air Force may be appointed as a judge, Island Attorney, Public Defender, or Clerk, to serve without additional compensation.

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 Code 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) 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 shall issue a subpoena to a party requesting it, setting forth the name of the witness subpoenaed.

(b) 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, and documents 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 in 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 $3 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 $3 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.

[37 FR 12384, June 23, 1972; 37 FR 13175, July 4, 1972]

Subpart J—Rules of Civil Procedure

§ 935.90 General.

(a) The Federal Rules of Civil Procedure apply to civil actions in the Court to the extent the Presiding Judge considers applicable under the circumstances.

(b) There is one form of action called the ''Civil Action.''

(c) Except as otherwise provided in this part, there is not 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. Complaints

———————————

(Defendant)

——————————— 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 ———.

(Plaintiff) ———————————————

§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. Summons

———————————

(Defendant)

To the above-named defendant:

You are hereby directed to appear and answer the attached cause at ——— on ——— day of ———, 19—, at —— p.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: ———, 19—.

(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 and shall allow him enough time to prepare his position with regard thereto.

§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 Senior 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 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 $300 in value;

(2) His beds, bedding, household furniture, and furnishings, stoves, and cooking utensils, up to $300 in value; and

(3) Mechanics tools and implements of the debtor's trade up to $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—Rules of Criminal Procedure

§ 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 may prescribe a schedule of bail for any offense under this Code 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.

[37 FR 12384, June 23, 1972; 37 FR 13175, July 4, 1972]

§ 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.

§ 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 obtain 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 at 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, except as otherwise provided in this part, to the extent the Presiding Justice 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 Senior 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 of an appeal may be waived by the Court of Appeals when the interests of justice so require.

(d) The Court 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.

[37 FR 12384, June 23, 1972; 37 FR 13475, July 4, 1972]

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) Inspect motor vehicles, boats and aircraft;

(e) May confiscate property used in the commission of a crime;

(f) May deputize any person 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) 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; and

(p) May make arrests, as provided in § 935.122.

§ 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.

§ 935.124 Warrants.

Any judge of the Wake Island Court 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) Sign the warrant;

(c) Describe in the warrant the offense charged;

(d) Issue the warrant to a peace officer for execution; and

(e) Place in the warrant a command that the person charged with the offense be arrested and brought before the Court.

[37 FR 12384, June 23, 1972; 37 FR 13470, July 8, 1972]

§ 935.126 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, in their discretion, require.

§ 935.128 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 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 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 entered an 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) Each driver of a motor vehicle shall yield the right-of-way to an emergency vehicle on an emergency run.

§ 935.134 Arm signals.

(a) 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.

(b) A signal light or other device may be used in place of an arm signal prescribed in paragraph (a) 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 each 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;

(g) Operate a motor vehicle in a speed contest or drag race; except in areas designated for the purpose by the Commander and under safety precautions approved by him;

(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 buisiness; or

(q) Operate a motor vehicle at night on the traveled part of a street or road, without using operating headlights.

§935.137 Operating requirements.

(a) Each person operating a motor vehicle on Wake Island shall—

(1) Dim the headlights of his vehicle when approaching an oncoming vehicle at night; and

(2) Comply with any special traffic instruction 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—

(1) A student operator's permit to any person who is at least 14 years of age, to be exercised only when the holder is accompanied by a qualified operator who assumes full responsibility for operating the vehicle; and

(2) An unlimited operator's permit to any person who is at least 16 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.

§935.139a 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) Muffler; and

(6) Spark or ignition noise suppressors.

(d) No person may operate a motor vehicle on Wake Island if that vehicle is equipped with a straight exhaust or muffler cutoff, except as may be authorized pursuant to §935.136(g).

Subpart O—Registration and Island Permits

§ 935.140 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 animal.

(4) Any device or instrument primarily designed for inflicting bodily injury, including a gun, pistol, or other firearm operated by air, gas, spring, or otherwise.

(5) A narcotic or dangerous drug or any poison.

(6) Any explosive.

(b) Each person who obtains custody of an article described in paragraph (a) (4), (5), or (6) 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.

§ 935.141 Island permit for boat, vehicle, or firearm.

(a) No person may use a privately owned motor vehicle, boat, or a firearm, gun, or pistol operated by air, gas, or spring, or otherwise, 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.

§ 935.142 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 discharge of explosives or fireworks or of firearms, guns, or pistols operated by air, gas, spring, or otherwise.

(e) 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.

(f) Keeping or maintaining an animal.

Subpart P—Public Safety

§ 935.150 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.

§ 935.151 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 inflammable fluids or materials except in a manner and at a place prescribed by the Commander.

§ 935.152 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.

[37 FR 12384, June 23, 1972; 37 FR 13470, July 8, 1972]

§ 935.153 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.

§ 935.154 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.

§ 935.155 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)

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ATTACHMENT 1 TO PART 989—GLOSSARY OF REFERENCES, ABBREVIATIONS, ACRONYMS, AND TERMS.
ATTACHMENT 2 TO PART 989—CATEGORICAL EXCLUSIONS.
ATTACHMENT 3 TO PART 989—PROCEDURES FOR HOLDING PUBLIC HEARINGS ON DRAFT ENVIRONMENTAL IMPACT STATEMENTS (EIS)

AUTHORITY: 10 U.S.C. 8013.

SOURCE: 60 FR 4548, Jan. 24, 1995, unless otherwise noted.

§ 989.1 Purpose.

(a) This part implements the Air Force Environmental Impact Analysis Process 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 Environmental Impact Analysis Process 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 U.S.C. 4321–4347), while the primary procedures for environmental impact analysis of actions outside the United States in accordance with Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, are contained in §§ 989.32 and 989.33.

(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 1500–1508, referred to as the ''CEQ Regulations''). Further requirements are contained in 32 CFR Part 188 (Department of Defense Directive (DoDD) 6050.1, Environmental Effects in the United States of DoD Actions, July 30, 1979), and DoD Instruction 5000.2, Defense Acquisition Management Policies and Procedures, February 23, 1991, with Change 1[1] and Air Force Supplement 1, Acquisition Management Policies, 31 August 1993, with Change 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, Executive Order 12114, and 32 CFR Part 187 (DoDD 6050.7, Environmental Effects Abroad of Major Department of Defense Actions, March

[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.

31, 1979). To comply with Executive Order 12114 and complete the EIAP, the Executive Order, 32 CFR Part 187, and this part must be used together.

(d) Attachment 1 of this part is a glossary of references, abbreviations, acronyms, and terms. Refer to 40 CFR Part 1508 for other terminology used in this part.

§989.2 Concept.

(a) This part provides a framework on how to comply with NEPA and Executive Order 12114 according to Air Force Policy Directive (AFPD) 32–70[2].

(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 Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations, and Environment (SAF/MI):

(i) Promulgates and oversees policy to ensure integration of environmental considerations.

(ii) Determines the level of environmental analysis required for especially important, visible, or controversial Air Force proposals and approves selected Environmental Assessments (EA) and Findings of No Significant Impact (FONSI).

(iii) Is the liaison on environmental matters with Federal agencies and national-level public interest organizations.

(iv) Is the approval authority for all Environmental Impact Statements (EIS) prepared for Air Force actions, whether classified or unclassified.

(2) The General Counsel (SAF/GC). Provides final legal advice to SAF/MI, HQ USAF, and HQ USAF Environmental Protection Committee (EPC) on EIAP questions.

(3) Office of Legislative Liaison (SAF/LL):

(i) Distributes draft and final EISs to congressional delegations.

(ii) 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 environmental documents requiring Office of the Secretary of the Air Force approval prior to public release.

(ii) Assists the environmental planning function and the Air Force Legal Services Agency, Trial Judiciary Division (AFLSA/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 Air Force Instruction (AFI) 35–202, Environmental Community Involvement[3].

(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 US Air Force (HQ USAF).* The Civil Engineer (HQ USAF/CE) formulates and oversees execution of EIAP policy. The National Guard Bureau Air Directorate (NGB-CF) oversees the EIAP for Air National Guard actions.

(c) *MAJCOMs, Air Force Reserve (AFRES), ANG, and Field Operating Agencies (FOA).* 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.

(1) *Air Force Center for Environmental Excellence (AFCEE).* The AFCEE Environmental Conservation and Planning Directorate (AFCEE/EC) provides technical assistance to major commands and the Air Force Base Conversion Agency.

[2] See footnote 1 to §989.1.

[3] See footnote 1 to §989.1.

(2) *Air Force Regional Compliance Offices (RCO).* RCOs review other agency environmental documents that may have an impact on the Air Force. Requests for review of such documents should be directed to the proper RCO (Atlanta, Dallas, or San Francisco) along with any relevant comments. The RCO:

(i) Notifies the proponent, after receipt, that the RCO 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 required.

(iii) Consolidates comments into the Air Force official response and submits the final response to the proponent.

(iv) Provides to HQ USAF, the appropriate MAJCOMs and installations a copy of the final response and a complete set of all review comments.

(3) *Headquarters Air Force Materiel Command (HQ AFMC).* HQ AFMC is responsible for applying EIAP to all proposed Air Force weapons systems and modifications to existing systems. These documents may be used as a basis for tiering documents in subsequent system beddown environmental analyses (see § 989.10). HQ AFMC ensures that:

(i) Environmental documents for acquisition of systems required for Defense Acquisition Board (DAB) decisions are completed prior to DAB milestone decisions.

(ii) Detailed guidance on the EIAP for acquisition programs, contained in DoD Instruction 5000.2 with Change 1, (part 6, Section I) and Air Force Supplement 7 with Change 1; DoD Manual 5000.2–M, Defense Acquisition Management Documentation and Reports, February 1991, with Change 1 (part 4, section F, Integrated Program Summary) and Air Force Supplement 1 with Change 1,[4] is complied with or is followed. Analysis requirements in this instruction apply where the Air Force is the sole acquisition agent or the lead service for joint programs.

(iii) EIAP studies involving real property, facilities, personnel, and training to support acquisition programs are coordinated through the HQ AFMC environmental planning function.

(d) *Environmental Planning Function (EPF).* The EPF is the interdisciplinary staff, at any level of command, responsible for the EIAP. The EPF:

(1) Assists the proponent in preparing a Description of Proposed Action and Alternatives (DOPAA) and actively supports the proponent during all phases of the EIAP.

(2) Evaluates proposed actions and completes Sections II and III of AF Form 813, Request for Environmental Impact Analysis, subsequent to submission by the proponent and determines whether a Categorical Exclusion (CATEX) applies. The EPF responsible official signs the AF Form 813 certification.

(3) Identifies and documents, with technical advice from the bioenvironmental engineer and other staff members, environmental quality standards that relate to the action under evaluation.

(4) Prepares 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.

(5) Ensures the EIAP is conducted on base- and MAJCOM-level plans, including contingency plans for the training, movement, and operations of Air Force personnel and equipment.

(6) Prepares the Notice of Intent (NOI) to prepare an EIS with assistance from the proponent and the Public Affairs Office.

(7) 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.[5]

(e) *Proponent.* Each office, unit, or activity at any level that initiates Air Force actions is responsible for:

(1) Notifying the EPF of a pending action and completing Section I of the AF Form 813, including a DOPAA, for submittal to the EPF.

(2) Identifying key decision points and coordinating with the EPF on

[4] See footnote 1 to § 989.1.

[5] See footnote 1 to § 989.1.

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.

(3) Integrating the EIAP into the planning stages of a proposed program or action and, with the EPF, determining as early as possible whether to prepare an EIS.

(4) Presenting the DOPAA to the EPC for review and comment.

(5) Coordinating with the EPF 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.

(6) 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 to HQ USAF/CEV for review and publication in the FEDERAL REGISTER.

(f) *Environmental Protection Committee (EPC).* The EPC helps commanders assess, review and approve EIAP documents.

(g) *Staff Judge Advocate (SJA).* The Staff Judge Advocate:

(1) Advises the command-level 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 AFLSA/JAJT (or NGB-JA) and provides support for the hearing officer in cases of public hearings on the draft EIS. The proponent pays administrative and TDY costs. The hearing officer presides at hearings and makes final decisions regarding hearing procedures, with concurrence from HQ USAF/CEV (or ANGRC/CEV).

(4) Promptly refers all matters causing or likely to cause substantial public controversy or litigation through channels to AFLSA/JACE (or NGB-JA).

(h) *Public Affairs Officer.* This officer:

(1) Advises the EPF, the EPC, and the proponent on public affairs implications of proposed actions and reviews environmental documents for public affairs issues.

(2) Advises the EPF during the scoping process of issues that should be addressed in the EIS.

(3) Prepares, coordinates, and distributes news releases related to the proposal and associated EIAP documents.

(4) Notifies the media (television, radio, newspaper) and purchases advertisements when newspapers will not run notices free of charge.

(5) For more comprehensive instructions about public affairs activities in environmental matters, see AFI 35–202.[6]

(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 assistance to EPFs to ensure consideration of safety standards and requirements.

§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, EIS Records of Decision (ROD), and documents prepared according to Executive Order (E.O.) 12114.

(b) Evaluate proposed actions for possible categorical exclusion (CATEX) from environmental impact analysis (attachment 2 of this part). CATEXs may apply to actions in the United States, its territories and possessions, and abroad.

(c) Make environmental documents, comments, and responses, including those of other Federal, state, and local agencies and the public, part of the record available for review and use at all levels of decision making.

[6] See footnote 1 to §989.1.

(d) Review the specific alternatives analyzed in the EIAP when evaluating the proposal prior to decision making.

(e) Ensure that alternatives considered by the decision-maker 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) Carry out actions that affect the environment of a foreign nation in a way that allows consideration of the environment, existing international agreements, and the sovereignty of other nations.

(i) Determine whether any foreign government should be informed of the 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/MIQ) through the Assistant Secretary of Defense. This coordination requirement does not apply to informal working-level communications and arrangements.

§ 989.5 Organizational relationships.

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.

(a) 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), or by the tenant unit. 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. Host/tenant agreements should provide specific procedures to ensure host oversight of tenant compliance.

(b) 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. When a program for a given year has sufficient support, HQ USAF/XOO notifies the host command or NGB–XO to initiate the EIAP. For classified actions, MAJCOMs and ANG begin reporting monthly EIAP status to HQ USAF/XO (copy to SAF/MIQ and HQ USAF/CEV) while the proposal is still classified, and upon declassification, to HQ USAF/CEV. MAJCOMs and ANG continue reporting until the EIAP is complete for all projects.

(c) To ensure timely initiation of the EIAP, SAF/AQ forwards information copies of all Mission Need Statements and System Operational Requirements Documents to SAF/MIQ, HQ USAF/CEV (or ANGRC/CEV), the Air Force Medical Operations Agency, Aerospace Medicine Office (AFMOA/SG), and the affected MAJCOM EPFs.

(d) The MAJCOM of the scheduling unit managing affected airspace is responsible for preparing and approving environmental analyses. The scheduling unit's higher headquarters may choose whether to prepare the environmental document, but is ultimately responsible for EIAP document accomplishment and approval.

§ 989.6 Budgeting and funding.

Contract EIAP efforts are proponent MAJCOM responsibilities. Each year, the EPF budgets for the anticipated EIAP workload based on reports of command proponents. If proponent offices exceed the budget in a given year or identify unforeseen requirements, the proponent offices must provide the remaining funding. For HQ AFMC, the system program office or project office budgets and funds EIAP efforts relating to research, development, testing, and evaluation activities.

§989.7 Requests from non-Air Force agencies or entities.

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, local, and tribal authorities.

(a) 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.

(b) 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.

(c) 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.

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.

(a) ''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.

(b) 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). Proponents 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.

(c) Except 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 1501.5–1501.6).* 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 Record of Decision 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 or cooperating 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)[7] with the requirements of NEPA and 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 Air Force 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. The rationale for not addressing environmental issues must also be recorded in the EA or EIS.

§ 989.13 Categorical exclusion.

(a) CATEXs apply to those classes 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 attachment 2 of this part. Command supplements to this part may not add CATEXs or expand the scope of the CATEXs in attachment 2 of this part.

(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.

[7] See footnote 1 to § 989.1.

(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/CEV 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 §989.28).

§989.14 Environmental assessment.

(a) When a proposed action is one not usually requiring an EIS but is not categorically excluded, the EPF must prepare an EA (40 CFR 1508.9). Every EA must lead to either a FONSI, a decision to prepare an EIS, or no decision 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) An EA 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.

(e) The format for the EA is 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) Certain EAs require SAF/MIQ approval because they involve topics of special importance or interest. Unless directed otherwise by SAF/MIQ, the EPF must forward the following types of EAs to SAF/MIQ through HQ USAF/CEV (copy to AFCEE/EC for technical review), along with an unsigned FONSI:

(1) EAs for actions where the Air Force has wetlands or floodplains compliance responsibilities (E.O. 11988 and E.O. 11990). A Finding of No Practicable Alternative (FONPA) must be submitted to HQ USAF/CEV when the alternative selected is located in wetlands or floodplains, and must discuss why no other practical alternative exists to avoid impacts. See AFI 32–7064, Integrated Resources Management.[8]

(2) System acquisition EAs.

(3) All EAs on non-Air Force agency proposals that require an Air Force decision, such as use of Air Force property for highways and joint-use proposals.

(4) EAs for actions that require the Air Force to make conformity determinations pursuant to the Clean Air Act, as amended, and the implementing rules. Conformity determinations are made by SAF/MIQ, see §989.28.

(5) EAs where mitigation to insignificance is accomplished in lieu of initiating an EIS (§989.22(c)).

(h) 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) Building construction on base within developed areas.

(4) Minor modifications to Military Operating Areas (MOA), air-to-ground weapons ranges, and military training routes.

[8] See footnote 1 to §989.1.

(5) Remediation of hazardous waste disposal sites.

(i) Abbreviated Environmental Assessment. In special circumstances, when the potential environmental impacts of a proposed action are clearly insignificant (as documented on AF Form 813) and none of the CATEXs in attachment 2 of this part apply, the EPF can use an abbreviated EA to assess the action. At a minimum, the abbreviated EA will consist of:

(1) AF Form 813 with attachments analyzing the environmental impacts of the proposed action and reasonable alternatives.

(2) A concise description of the affected environment.

(3) A concise FONSI (see § 989.15).

(j) The Air Force should involve environmental agencies, applicants, and the public in the preparation of EAs (40 CFR 1501.4(b)). 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 § 989.23(b) and (c).

§ 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 attached, 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. Most FONSIs should not 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 § 989.23. 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 provide the FONSI and complete EA to organizations and individuals requesting them and to whomever the proponent or the EPF has reason to believe is interested in the action. The EPF provides a copy of the documents without cost to organizations and individuals requesting them. The earliest of the FONSI transmittal date (date of letter of transmittal) to the SPOC or other interested party is the official notification date.

(1) The EPF must make the draft EA/FONSI available to the affected public unless disclosure is precluded for security classification reasons. 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/FONSI is 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 draft 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.

(f) As a rule, the same organizational level that prepares the EA 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).

(g) Air Force staff must get permission to deviate from the procedures outlined in this part from SAF/MIQ in accordance with §989.30.

§989.16 Environmental impact statement.

(a) Certain classes of environmental impacts require preparation of an EIS (40 CFR Part 1502). 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. 155–158).

(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 to HQ USAF/CEV the NOI (40 CFR 1508.22) describing the proposed action for publication in the FEDERAL REGISTER. The EPF, through the host base public affairs office, will also provide the 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 proper state SPOC (E.O. 12372) and must also distribute it to requesting agencies, organizations, and individuals. Along with the draft NOI, the EPF must also forward the completed DOPAA to HQ USAF for review.

§989.18 Scoping.

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 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)). 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 meeting plans for scoping meetings to AF/CEV (or ANGRC/CEV) for SAF/MIQ concurrence no later than 30 days before the first scoping meeting. Scoping meeting plans are similar in content to public hearing plans (see attachment 3 of this part).

§989.19 Draft EIS.

(a) *Preliminary draft.* The EPF prepares 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 are normally 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/CEV for HQ USAF EPC review and to AFCEE/EC for technical review.

(b) *Review of draft EIS.* After the HQ USAF EPC review, the EPF makes any

necessary revisions to the PDEIS and forwards it to HQ USAF/CEV as a draft EIS for security and policy review. Once the draft EIS is approved, HQ USAF/CEV notifies the EPF to print sufficient copies of the draft EIS for distribution to congressional delegations and interested agencies. After congressional distribution, the EPF sends the draft EIS to all others on the distribution list. HQ USAF/CEV then files the document with the Environmental Protection Agency (EPA) and provides a copy to the Deputy Under Secretary of Defense for Environmental Security.

(c) *Public review of draft EIS (40 CFR 1502.19).* (1) The public comment period for the draft EIS is at least 45 days from the publication date of the notice of availability (NOA) of the draft EIS in the FEDERAL REGISTER. EPA publishes in the FEDERAL REGISTER, each week, NOAs of EISs filed during the preceding week. This public comment period may be extended an additional 15 days, at the request of 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).

(2) The EPF holds public hearings on the draft EIS according to the procedures in 40 CFR 1506.6(c) and (d). Hearings take place no sooner than 15 days after the FEDERAL REGISTER 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 plans to HQ USAF/CEV (or ANGRC/CEV) for SAF/MIQ concurrence no later than 30 days prior to the first public hearing. See attachment 3 of this part for public hearing procedures.

(d) *Response to comments (40 CFR 1503.4).* The EPF must incorporate its responses to comments in the final EIS by either modifying the text and referring in the appendix to where the appropriate modification 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.

§ 989.20 Final EIS.

(a) If changes in the draft EIS are minor or limited to factual corrections and responses to comments, the proponent may, with the prior approval of SAF/MIQ, prepare a document containing only draft EIS comments, Air Force responses, and errata sheets of changes staffed to the HQ USAF EPC for coordination. However, the proponent 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/CEV 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, 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 FEIS approval, reevaluation of the documentation should be accomplished to ensure its continued validity.

§989.21 Record of decision.

(a) The MAJCOM prepares draft RODs, formally staffs them to HQ USAF/CEV for verification of adequacy, and forwards them to the final decision-maker for signature. 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 30 days after publication of the NOA of the final EIS in the FEDERAL REGISTER. EPA publishes NOAs each Friday; when Friday is a holiday, the notice is published on Thursday.

(b) The Air Force must announce the ROD to the affected public as specified in §989.23, 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 (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.

§989.22 Mitigation.

(a) When preparing EIAP documents, indicate clearly whether mitigation measures (40 CFR 1508.20) must be implemented for the alternative selected. 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 are 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 keep the EPF informed of the status of mitigation measures when the proponent implements the action. The EPF monitors the progress of mitigation implementation and reports its status to HQ USAF/CEV on a periodic basis. 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 publishes 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 to HQ USAF/CEV for review within 90 days from the date of signature of the FONSI or ROD.

§ 989.23 Public notification.

Except as provided in § 989.25, public notification is required for various aspects of the EIAP.

(a) Activities that require public notification include:

(1) The FONSI for an EA.

(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.

(b) 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 FONSI or EIS notices, if the news media fail to carry the story and, in the case of a FONSI, if the action requires that, after public notice of the FONSI, 30 days must pass before a decision or any action is permissible (see § 989.15(e)(2)), the public affairs officer must purchase an advertisement in the local newspaper(s) of general circulation (not ''legal'' newspapers or ''legal section'' of general newspapers).

(c) 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 organization (date of letter of notification) or when the local media carries the story (date of story), whichever occurs first. Operations and maintenance funds pay for the advertisements.

§ 989.24 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 non-permanent 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. When dealing with base closure or realignment EIAP documents, MAJCOMs and HQ USAF offices should obtain legal advice on special congressional requirements. Consult with HQ USAF/XOO, the HQ USAF focal point for the realignment process, decision documents, and congressional requirements.

§ 989.25 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 §989.25(b) actions, an NOI or NOA will not be published in the FEDERAL REGISTER until the proposed action is declassified. For §989.25(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/MIQ, 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/MIQ, with support from SAF/GC and other staff elements as necessary, makes final decisions on EIAP procedures for classified actions.

§989.26 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. Normally, compliance with Occupational Safety and Health Administration (OSHA) standards will mitigate hazards. The EIAP document does not need to specify such 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.

§989.27 Airspace proposals.

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.

§ 989.28 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 Part 93, Subpart B. All EIAP documents must address applicable conformity requirements and the status of compliance. Conformity applicability analyses and determinations 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.

§ 989.29 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 incorporate pollution prevention measures whenever feasible. 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 [9]).

§ 989.30 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/CEV (or ANGRC/CEV) for review and approval by SAF/MIQ.

(b) *Emergency procedures (40 CFR 1506.11).* 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/CEV, for SAF/MIQ 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.

§ 989.31 Reporting requirements.

(a) EAs, EISs, and mitigation measures will be tracked through the Work Information Management System-Environmental Subsystem (WIMS–ES), as required by AFI 32–7002, Environmental Information Management System.[10] ANGRC/CE will provide EIAP updates to HQ USAF/CEV through the WIMS–ES.

(b) All documentation will be disposed of according to AFMAN 37–139, Records Disposition—Standards (formerly AFR 4–20, Volume 2 [11]).

§ 989.32 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, Environmental Effects Abroad of Major Federal Actions. For analysis of Air Force actions abroad, 32 CFR Part 187 will be followed. Also, refer to *Environmental Defense Fund* v. *Massey*, 986 F. 2d 528.

[9] See footnote 1 to § 989.1.

[10] See footnote 1 to § 989.1.

[11] See footnote 1 to § 989.1.

§ 989.33 Requirements for analysis abroad.

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:

(a) For EAs dealing with global commons, HQ USAF/CEV 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.

(b) For EISs dealing with the global commons, the EPF provides sufficient copies to HQ USAF/CEV for the HQ USAF EPC review and AFCEE/EC technical review. After EPC review, the EPF makes a recommendation as to whether the proposed draft EIS will be released as a draft EIS.

(c) For environmental studies and environmental reviews, forward all environmental studies and reviews to HQ USAF/CEV for coordination among appropriate Federal agencies. HQ USAF/CEV 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/CEV also may inform interested foreign governments or furnish copies of studies, in accordance with 32 CFR Part 187.

ATTACHMENT 1 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 (3 CFR, 1977 Comp., p. 117)

Executive Order 11990, *Protection of Wetlands*, May 24, 1977 (3 CFR, 1977 Comp., p. 121)

Executive Order 12114, *Environmental Effects Abroad of Major Federal Actions*, January 4, 1979 (3 CFR, 1979 Comp., p. 356)

Executive Order 12372, *Intergovernmental Review of Federal Programs*, July 14, 1982 (3 CFR, 1982 Comp., p. 197)

US Government Agency Publications

Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 CFR Parts 1500–1508

DoD Instruction 5000.2, *Defense Acquisition Management Policies and Procedures*, February 23, 1991, with Change 1, and Air Force Supplement 1, Acquisition Management Policies, 31 August 1993, with Change 1

DoD Manual 5000.2–M, *Defense Acquisition Management Documentation and Reports*, February 1991

DoD Directive 6050.1, *Environmental Effects in the United States of DoD Actions*, July 30, 1979 (32 CFR Part 188)

DoD Directive 6050.7, *Environmental Effects Abroad of Major Department of Defense Actions*, March 31, 1979 (32 CFR Part 187)

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 32–7062, *Air Force Comprehensive Planning*

AFI 32–7064, *Integrated Resources Management*

AFI 32–7080, *Pollution Prevention Program*

AFI 35–202, *Environmental Community Involvement*

AFMAN 37–139, *Records Disposition—Standards*

Abbreviations and Acronyms

Abbreviation or acronym Definition

AFCEE Air Force Center for Environmental Excellence

AFCEE/EC Air Force Center for Environmental Excellence/Environmental Conservation and Planning Directorate

AFI Air Force Instruction

AFLSA/JACE Air Force Legal Services Agency/Environmental Law and Litigation Division

AFLSA/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

CATEX Categorical Exclusion

CEQ Council on Environmental Quality

CFR Code of Federal Regulations

DAB Defense Acquisition Board

DoD Department of Defense

DoDD Department of Defense Directive

DoDM Department of Defense Manual

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
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/CE The Air Force Civil Engineer
MAJCOM Major Command
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
OSD Office of the Secretary of Defense
OSHA Occupational Safety and Health Administration
PDEIS Preliminary Draft Environmental Impact Statement
RCO Air Force Regional Compliance Office
ROD Record of Decision
SAF/GC Air Force General Counsel
SAF/LL Air Force Office of Legislative Liaison
SAF/MI Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations, and Environment
SAF/MIQ Deputy Assistant Secretary of the Air Force (Environment, Safety, and Occupational Health)
SAF/PA Air Force Office of Public Affairs
SJA Staff Judge Advocate
SPOC Single Point of Contact
TDY Temporary Duty
U.S.C. United States Code
WIMS–ES Work Information Management System-Environmental Subsystem

Terms

NOTE: All terms listed in the CEQ Regulations, 40 CFR Part 1508, apply to this part. In addition, the following terms apply:

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.

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)— Documentation 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.

National Environmental Policy Act of 1969 (NEPA)— The basic national charter to protect the environment that requires all Federal agencies to consider environmental impacts when making decisions regarding proposed actions.

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 public process for proposing alternatives to be addressed and for identifying the significant issues related to a proposed action.

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 the Virgin Islands, American Samoa, Wake Island, Midway Island, Guam, Palmyra Island, Johnston Atoll, Navassa Island, and Kingman Reef.

ATTACHMENT 2 TO PART 989—CATEGORICAL EXCLUSIONS

A2.2 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, state regulatory agency review of plans, and so on.

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:

A.2.2.1. 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 unproven 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.

A2.3. 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.

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, 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 attachment. 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 temporary duty (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 hazardous spillage or waste sites or contaminated groundwater or soil. 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 interagency agreements, administrative orders, or work plans previously agreed to by EPA or state regulators. *Note:* This CATEX does not apply to the selection of the remedial action.

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. Long-term cleanup and remediation activities should be evaluated separately.

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.

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.

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 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.

ATTACHMENT 3 TO PART 989—PROCEDURES FOR HOLDING PUBLIC HEARINGS ON DRAFT ENVIRONMENTAL IMPACT STATEMENTS (EIS)

A.3.1. General Information:

A.3.1.1. The Air Force solicits the views of the public and special interest groups and, in appropriate cases, holds public hearings on the draft EIS.

A3.1.2. 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.

A3.1.3. The proponent EPF 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.), and forwards the transcripts of the hearings to AFLSA/JAJT.

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. Under certain circumstances, purchase an 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.

A3.2.2. 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/CEV 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 and telephone number of a person to contact for more information.

A3.2.3.4. The request 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 offices or 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 or other suitable place in the vicinity of the proposed action and public hearing.

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 AFLSA/JAJT selects a judge advocate, who is a military judge with experience in conducting public meetings, 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 the Staff Judge Advocate of the proponent command, 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. Each speaker should have a time limit to provide maximum public input to the decision-maker.

A3.6. Record of the Hearing. The hearing officer must make sure a verbatim transcribed record of the hearing is prepared, including all stated positions, all questions, and all responses. The hearing officer should append all written submissions that parties provide to the hearing officer during the hearing to the record as attachments. The hearing officer 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 hearing officer 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. Organizing Speakers by Subject. If time and circumstances permit, the hearing

officer should group speakers by subject matter. For example, all persons wishing to address water quality issues should make their presentations one after the other so the EIS preparation team can review the transcript and make summaries from it more easily.

A3.7.2. 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.

A3.7.3. 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.

A3.7.4. 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.

A3.7.5. 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 hearing officer 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.

A3.7.6. 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.

A3.7.7. 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/MIQ 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.

Subtitle B—Other Regulations Relating to National Defense

CHAPTER XII—DEFENSE LOGISTICS AGENCY

SUBCHAPTER A [RESERVED]

SUBCHAPTER B—MISCELLANEOUS

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SUBCHAPTER A [RESERVED]
SUBCHAPTER B—MISCELLANEOUS

PART 1280—INVESTIGATING AND PROCESSING CERTAIN NON-CONTRACTUAL 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, or Federal agency if, after consultation with such activity, component, or

[2] Copies may be obtained, at cost, from DASC–PD, Cameron Station, Alexandria, VA 22304–6130.

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 numbering system so that members of the public can readily locate material.

[3] See Footnote 2 to § 1285.2(i)(4).

[4] See Footnote 2 to § 1285.2(i)(4).

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 be exempt from public disclosure under one or more of FOIA exemptions may

[5] See Footnote 2 to § 1285.2(i)(4).

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 States Government under Federal law in connection with the transaction of

[6] See Footnote 1 to § 1285.1.

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.

(8) Establish procedures for the collection and deposit of fees for FOIA services.

(9) Ensure that cost data is maintained for each case file.

[7] See Footnote 2 to § 1285.2(i)(4).

[8] See Footnote 2 to § 1285.2(i)(4).

(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.

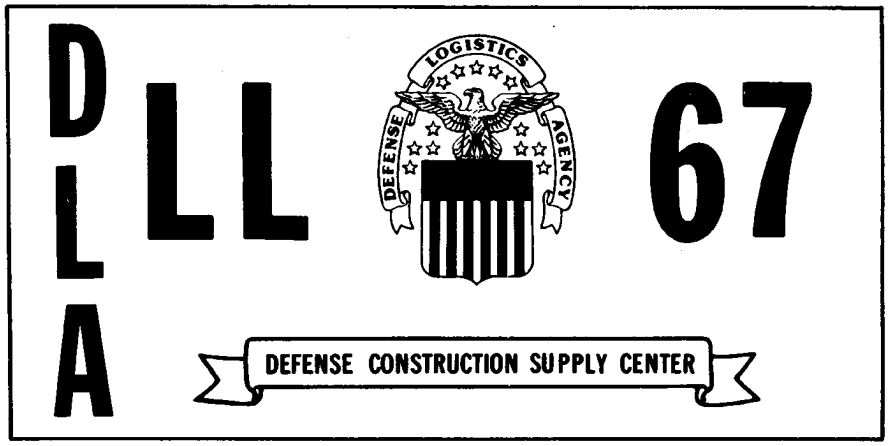
b. Registration letters and numerals: 1¼ to 1½ inches in height.

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.

APPENDICES TO PART 1290

APPENDIX A—PREPARATION GUIDE FOR DD FORM 1805, VIOLATION NOTICE
APPENDIX B—TICKET SAMPLE—A PARKING VIOLATION
APPENDIX C—TICKET SAMPLE—A MOVING VIOLATION
APPENDIX D—TICKET SAMPLE—A NONTRAFFIC VIOLATION

AUTHORITY: Department of Defense Instruction 6055.4; 18 U.S.C. 13, 3401, and 3402.

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.

[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.

(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.

APPENDICES TO PART 1290

APPENDIX A—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.

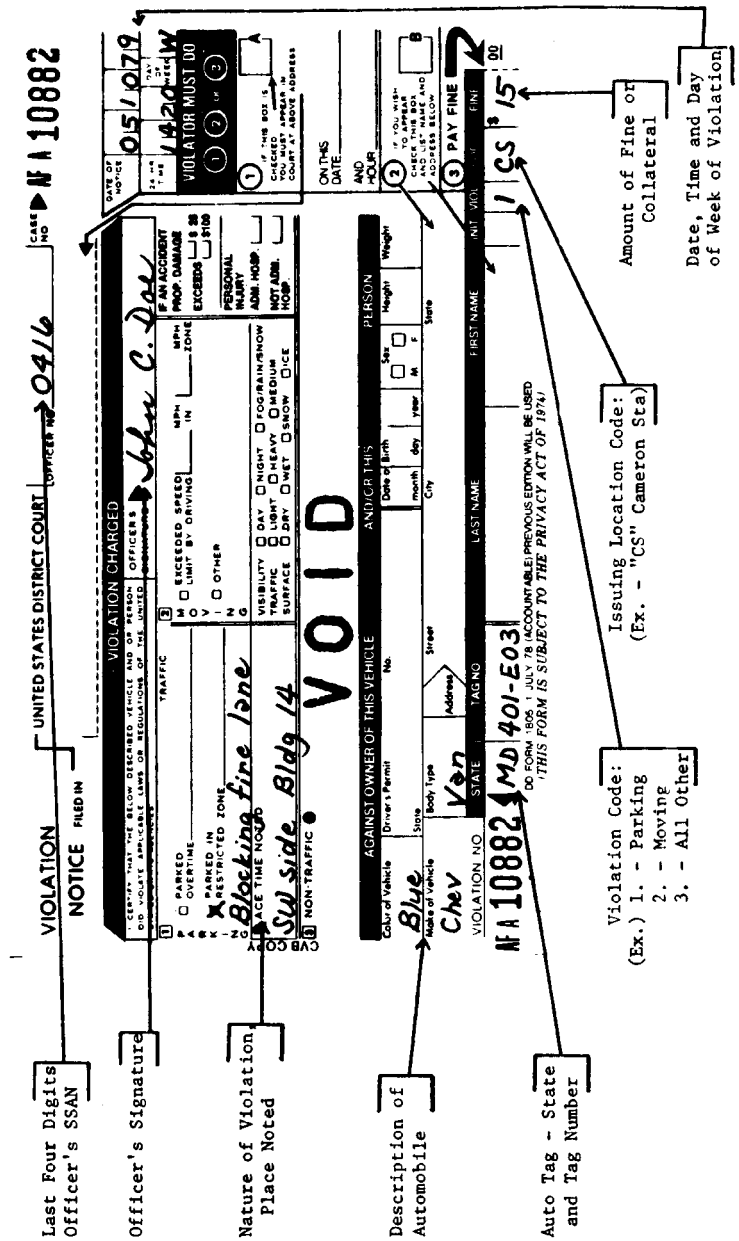
Nontraffic offenses require: Statute violated, person's name, person's address, birth date, and sex; and, if applicable: Race, height, and weight.

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''.

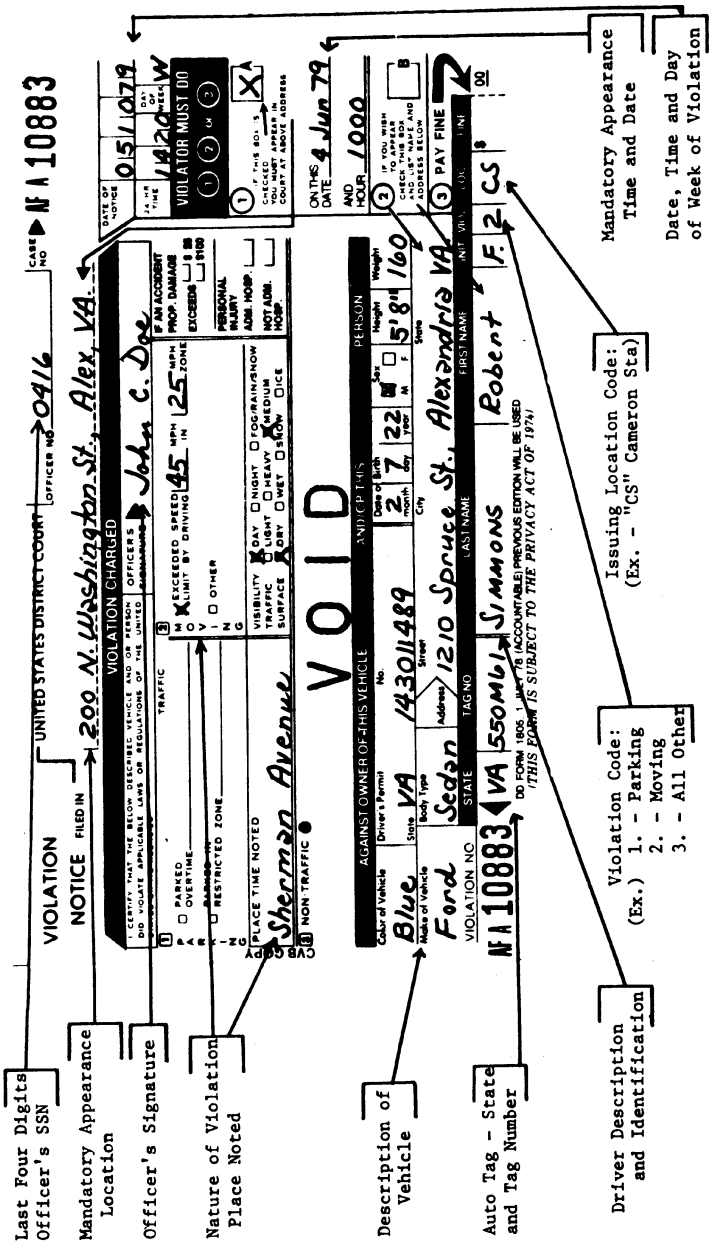
APPENDIX B

TICKET SAMPLE - A PARKING VIOLATION



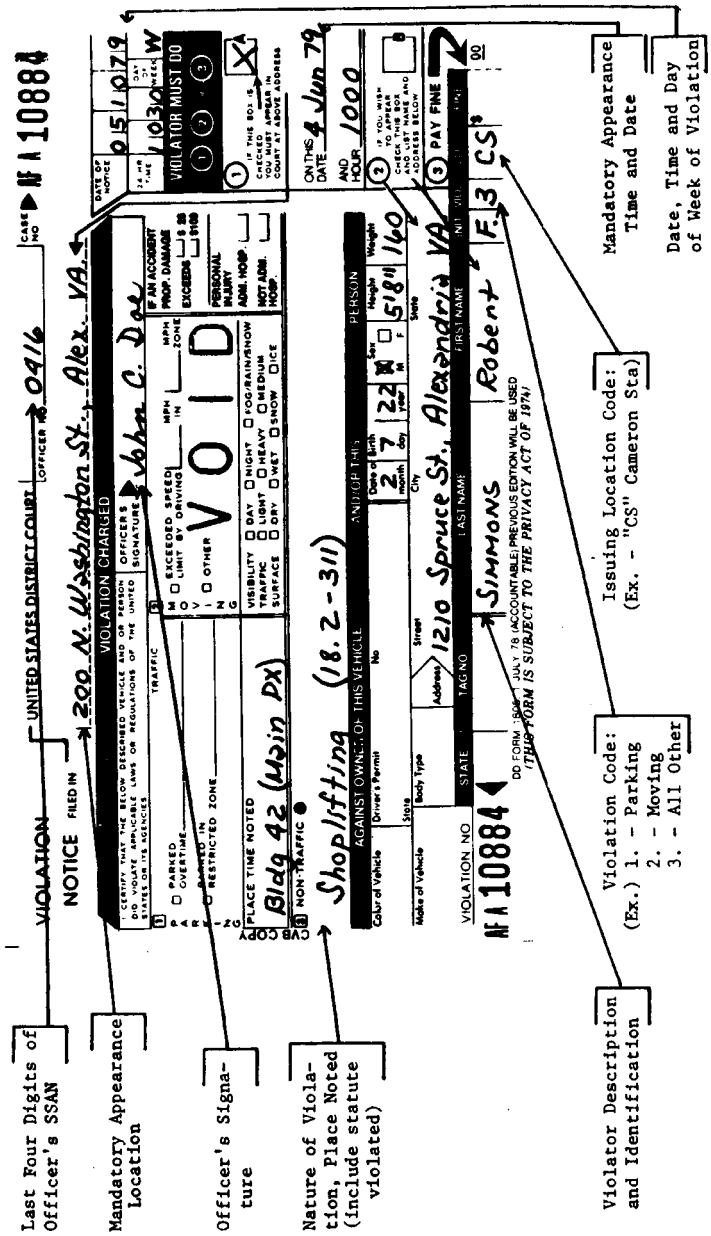
APPENDIX C

TICKET SAMPLE - A MOVING VIOLATION
(In Mandatory Appearance Category)



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.

PART 1293—STANDARDS OF CONDUCT

1293.1 Reference.
1293.2 Purpose and scope.
1293.3 Policy.
1293.4 Definitions.
1293.5 Significant changes.
1293.6 Responsibilities.
1293.7 Procedures.

APPENDICES TO PART 1293

APPENDIX A—LAWS AFFECTING DLA PERSONNEL
APPENDIX B—CODE OF ETHICS FOR GOVERNMENT SERVICE—PUB. L. 96–303
APPENDIX C—ADDITIONAL GUIDANCE ON GRATUITIES, REIMBURSEMENTS, AND OTHER BENEFITS FROM OUTSIDE SOURCES
APPENDIX D—EXECUTIVE PERSONNEL FINANCIAL DISCLOSURE REPORT (SF 278)
APPENDIX E—REQUIREMENTS FOR SUBMISSION OF DD FORM 1555, STATEMENT OF AFFILIATIONS AND FINANCIAL INTERESTS
APPENDIX F—REPORTING PROCEDURES FOR DOD AND DEFENSE RELATED EMPLOYMENT
APPENDIX G—ADMINISTRATIVE ENFORCEMENT PROVISIONS

AUTHORITY: E.O. 12222, 30 FR 6469; 18 U.S.C. 201–209.

SOURCE: 53 FR 45462, Nov. 10, 1988, unless otherwise noted.

§1293.1 References.

(a) DLAR 1005.1, Decorations and Gifts from Foreign Governments.

(b) DLAR 1430.12, Civilian Employee Development and Training.

(c) DLAR 5035.1, Fund-Raising Within the Defense Logistics Agency.

(d) DLAR 5400.13, Clearance of Information for Public Release.

(e) DLAR 5500.4, Policies Governing Participation of DLA and Its Personnel in Activities of Private Associations.

§1293.2 Purpose and scope.

(a) Part 1293 prescribes standards of conduct required of all DLA personnel, military and civilian, regardless of grade or assignment. It also establishes criteria and procedures for reports required of certain individuals who have left Federal service and of former employees of defense contractors presently employed by DLA.

(b) Close adherence to the standards of conduct will ensure compliance with the high ethical standards demanded of all public employees. Violations of the standards prescribed in this regulation, or by Federal laws, including the laws described in enclosure 1, may result in criminal and/or administrative sanctions. Accordingly, all DLA personnel should become familiar with these standards.

(c) The reporting procedures for defense related employment are applicable to former military officers and civilian employees of DLA and to former employees of defense contractors presently employed by DLA.

(d) All retired regular officers are also required to file a statement of employment with the Military Department in which they hold a retired status.

(e) This DLAR is applicable to HQ DLA and all DLA field activities and implements DoD Directive 5500.7, Standards of Conduct.

§1293.3 Policy.

(a) *General requirements.* (1) Government employment is a public trust which requires that loyalty to country, ethical principles, and the law be placed above private gain and other interests. All DLA personnel must conduct themselves, both on and off the job, in such a manner as to avoid the existence or appearance of a conflict of interest between their official responsibilities and their personal affairs.

(2) DLA personnel shall become familiar with the scope of, authority for, and limitations on the activities for which they are responsible. DLA personnel also shall acquire a general knowledge of the statutory standards of conduct prohibitions and restrictions. The most commonly encountered of these provisions are summarized in appendix A, and are laws dealing generally with conflicts of interest and postemployment activities.

(3) If DLA personnel are unsure whether a proposed action or decision is proper because it may be contrary to law or regulation, they shall consult the Designated Agency Ethics Official, or Deputy Ethics Official, for guidance. The individuals are identified in §1293.4.

(4) DLA personnel shall not take or recommend any action or make or recommend any expenditure of funds known or believed to be in violation of Federal laws, Executive Orders, or applicable directives, instructions, or regulations.

(5) Practices that may be accepted in the private business world may not be acceptable for DLA personnel. As public employees, all DLA personnel are accountable for the manner in which they perform their official responsibilities.

(6) DLA personnel shall strictly adhere to the DLA program of equal opportunity regardless of race, color, religion, sex, age, national origin, or handicap.

(7) DLA personnel shall avoid any action, whether or not specifically prohibited by part 1293, which might result in or reasonably be expected to create the appearance of:

(i) Using public office for private gain.

(ii) Giving preferential treatment to any person or entity.

(iii) Impeding Government efficiency or economy.

(iv) Losing complete independence or impartiality.

(v) Making a Government decision outside official channels.

(vi) Affecting adversely the confidence of the public in the integrity of the Government.

(b) *Information to personnel.* (1) All new civilian employees and military personnel newly assigned to DLA will be provided a copy of part 1293 upon their entrance to duty.

(2) DLA personnel shall be reminded at least semiannually of their duty to comply with the required standards of conduct. Appropriate means of accomplishing these reminders include notices, circulation of part 1293 to employees, briefings, or any other means which serve to remind employees of their ethical responsibilities.

(3) Copies of the Code of Ethics for Government Service (appendix B) shall be displayed in appropriate areas of DLA occupied buildings in which 20 or more persons are regularly employed. (Code of Ethics posters are self-service supply items and may be obtained under NSN 7690–01–099–8167.)

(4) All DLA employees (military and civilian) who leave Federal service shall be informed of the restrictions on the postemployment activities of former Federal employees.

(c) *Conflicts of interest*—(1) *Affiliations and Outside Associations.* (i) DLA personnel shall not engage in any personal, business, or professional activity which conflicts with the interests of the Government they serve through the duties and responsibilities of their DLA positions. This prohibition applies to all DLA employees, regardless of whether they are required to file a financial disclosure report. In the event a conflict, or potential conflict of interest arises, it shall be promptly reported and resolved in accordance with § 1293.7(b).

(ii) Membership or activity of DLA personnel in non-Governmental associations or organizations must not be incompatible with their official Government positions (see DLAR 5500.4).[1]

(iii) DLA personnel shall not knowingly deal, on behalf of the Government, with present or former Government personnel, military or civilian, whose participation in the transaction would be in violation of a statute, regulation, or policy set forth in part 1293.

(2) *Financial interests.* DLA personnel shall not receive or retain any direct or indirect financial interest which conflicts with the interests of the Government they serve through the duties and responsibilities of their DLA positions. Matters concerning outside employment by DLA personnel are discussed in paragraph (i) of this section. For the purpose of this prohibition, the financial interests of a spouse, minor child, or any household member are treated as the financial interests of the DLA employee. Thus, not only stocks and other similar holdings, but also the wages, salaries, dividends, or any other income of a spouse, minor child, or household member are considered financial interests of the DLA employee. Particular care must be given in situations involving former DoD contractor employees as they may be entitled to benefits from their former employer (such as pensions, company discounts or concessions, etc.) which could create a criminal conflict of interest situation under 18 U.S.C. 208 if DLA assigns the employee duties and responsibilities involving the former employer. (For reporting requirements unique to former DoD contractor employees see § 1293.7(e). These prohibitions apply to all DLA employees, regardless of whether they are required to file a financial disclosure report. In the event a conflict or potential conflict of interest arises, it shall be promptly reported and resolved in accordance with § 1293.7(b).

(3) *Avoiding Actual or the Appearance of Conflicts of Interest.* Direct or indirect financial interests in a defense related contractor, in any amount and in any form (stocks, bonds, options, employment of spouse, minor child, or any other household member) may be a prohibited conflict or appearance of a conflict of interest. Outside employment or other outside activity, with or without compensation, regarding possible future employment may also create a conflict or the appearance of a conflict of interest. Discussions with a defense contractor regarding possible future employment may require reporting and disqualification under the procedures set forth in paragraph (k) of

[1] Copies may be obtained, if needed, from Defense Logistics Agency, ATTN: DLA–XPD, Cameron Station, Alexandria, VA 22304–6100.

this section. In these situations, DLA personnel are encouraged to seek advice from the Designated Agency Ethics Official or Deputy Ethics Official to protect not only themselves, but also be avoid embarrassment to DLA.

(4) *Assignment of Reserves for training.* DLA personnel who assign Reserves for training shall not assign them to duties in which they will obtain information that could be used by them or their private sector employers to gain unfair advantage over civilian competitors. Prior to entering active duty, reservists must disclose to superiors or assignment personnel, sufficient information to ensure that no conflict exists between their duty assignments and their private interests.

(d) *Use of DLA Position, Property, Resources, and Information*—(1) *Using DLA position.* DLA personnel are prohibited from using their DLA position to induce, coerce, or in any manner influence any person to provide any benefit, financial or otherwise, to themselves or others.

(2) *Use of Civilian and Military Titles or Positions in Connection with Commercial Enterprises.* (i) All DLA personnel are prohibited from using their official titles or positions in connection with the promotion of any commercial enterprise or endorsement of any commercial product. This does not preclude author identification for materials published in accordance with DLAR 5400.13.[2]

(ii) Retired military personnel, and members of Reserve components not on active duty, may use their military titles in connection with commercial enterprises provided that they indicate their Retired or Reserve status. However, if the use of military titles in any way casts discredit on the Military Departments or DoD, or gives the appearance of sponsorship, sanction, endorsement, or approval by a Military Department or DoD, it is prohibited. In addition, a Military Department may further restrict the use of titles, including use by retired military personnel and members of reserve components not on active duty, in overseas areas.

[2] See footnote 1, to § 1293.3(c)(1)(ii).

(3) *Use of Government property and resources.* (i) DLA personnel have a positive duty to protect and conserve Government property and resources and assure that they are used only for official Government business. DLA personnel shall not directly or indirectly use, take, dispose of, or allow the use, taking, or disposing of, Government property including property leased to the Government, for other than official purposes. Government facilities, property, and resources (such as telephones, stationery, stenographic and typing assistance, duplicating and computer equipment) shall be used only for official Government business.

(ii) These provisions do not preclude the use of Government facilities for approved activities in furtherance of DLA community relations, provided they do not interfere with military missions or Government business. Government equipment and clerical support may be authorized for the preparation of papers to be presented to professional associations if appropriate to the mission of the office and approved, in advance, by the Head of the HQ PSE or PLFA.

(iii) All DLA personnel are responsible for using office telecommunication services (telephone, message, data, video, facsimile services, etc.) for official use only. The term *official use* means service directly in support of Government business or as otherwise approved by the Head of the PSE or PLFA, or their designee, as being in the best interest of the Government.

(A) DLA office telecommunications services are resources provided to conduct business directly in support of the Government.

(B) DLA shall pay only for the official uses of DLA telecommunications services.

(C) Where available and practicable, steps shall be taken to ensure user accountability (i.e., call verification, call restriction, other telecommunications service features).

(D) Employees who make unofficial use of DLA office telecommunications services are subject to appropriate disciplinary action.

(4) *Using inside information.* DLA personnel shall not directly or indirectly use information obtained as a result of their DLA position to further a private

gain for themselves or others if that information is not generally available to the public. This prohibition continues even after a DLA employee leaves Federal service.

(5) *Release of acquisition information.* All releases of acquisition information shall be in accordance with authorized procedures. DLA personnel are prohibited from making an unauthorized disclosure of any information concerning proposed acquisitions or purchases by DLA, or the identity of any contractor, unless the contractor's identity has been made public under established procedures.

(6) *Unauthorized statements or commitments with respect to award of contracts.* Only contracting officers and their duly authorized representatives acting within their authority are authorized to commit the Government to the award of contracts. Unauthorized DLA personnel are prohibited from making any commitment or promise relating to the award of a contract or from making any representation that reasonably can be construed as such a commitment.

(e) *Commercial and charitable solicitations*—(1) *Commercial Soliciting by DLA Personnel.* To eliminate the appearance of coercion, intimidation, or pressure from rank, grade, or position, full-time DLA personnel are prohibited from making personal commercial solicitations or sales to DLA personnel (including their family members) who are junior in rank or grade, or who are under any level of supervision by them, at any time, on or off duty.

(i) This prohibition includes, but is not limited to, the solicitation and sale of insurance, stocks, mutual funds, real estate, and any other commodities, goods, or services.

(ii) This prohibition does not include the sale or lease by individuals of their own personal property or privately-owned residence or to the off-duty employment of DLA personnel as employees in retail stores or other situations not involving solicited sales.

(2) *Charitable solicitations by DLA personnel.* The high visibility of DLA officials generates requests from charitable and nonprofit organizations to use an official's name and title in conjunction with fund-raising activities. The use of names and titles of DLA officials, even regarding fund-raising activities of charitable organizations, may give an improper impression that the Department of Defense or Defense Logistics Agency endorses the activities of a particular organization, thereby resulting in unauthorized assistance for the organization or sponsors of the activities. The presence of DLA officials may be sought, under the guise of bestowing awards upon the official, to promote attendance at programs. DLA officials shall not allow the use of their names or titles in connection with charitable or nonprofit organizations, subject to the following:

(i) DLA personnel may assist only those charitable programs administered by the Office of Personnel Management under its delegation from the President and those other programs authorized by DLAR 5035.1.

(ii) This prohibition does not preclude speeches before such organizations by DLA officials if the speech is designed to express an official position in a public forum.

(iii) This prohibition does not preclude volunteer efforts on behalf of charitable or nonprofit organizations by individuals who do not use their official titles in relation to solicitations and who do not solicit from individuals or entities with whom they do business in their official capacity.

(f) *Other prohibitions*—(1) *Gambling, betting, and lotteries.* While on Government-owned, leased, or controlled property, or otherwise while on duty for the Government, DLA personnel shall not participate in any gambling activity, including a lottery or pool, a game for money or property, and the sale or purchase of a number slip or ticket. The only exceptions are:

(i) Where authorized by law, such as vending stands licensed in accordance with 20 U.S.C. 107a(a)(5) to sell chances for any lottery authorized by state law and conducted by an agency of a state.

(ii) Activities which have been specifically approved by the Director, DLA.

(2) *Indebtedness.* DLA personnel shall pay their just financial obligations in a timely manner, particularly those imposed by law, such as Federal, state, and local taxes. DLA activities are not

required to determine the validity or amount of disputed debts.

(g) *Gratuities, reimbursements, and other benefits from outside sources*—(1) *Policy*. No matter how innocently tendered and received, the acceptance of gratuities, reimbursements, or other benefits by DLA personnel (including their spouse, minor child, or any household member) from those who have or seek business with the Department of Defense or from those whose business interests are affected by Department of Defense functions, may be a source of embarrassment to the Department of Defense, may affect the objective judgment of the DLA personnel involved, and may impair public confidence in the integrity of the Government.

(2) *Bribery and graft*. DLA personnel may be subject to criminal penalties if they solicit, accept, or agree to accept anything of value in return for performing or refraining from performing an official act.

(3) *General prohibition*. Except in the limited circumstances set forth in appendix C, DLA personnel (including their spouse, minor child, or any household member) shall not solicit, accept, or agree to accept any gratuity, reimbursement, or other benefit for themselves, or others, either directly or indirectly from or on behalf of any source that:

(i) Is engaged in or seeks business or financial relations of any sort with any DoD Component.

(ii) Conducts operations or activities that are either regulated by a DoD Component or substantially affected by DoD decisions.

(iii) Has interests that may be substantially affected by the performance or nonperformance of the official duties of DLA personnel.

(iv) Is a foreign government or representative of a foreign government that is engaged in selling to the DoD, where the gratuity is tendered in the context of the foreign government's commercial activities. (See also paragraph (h)(1) of this section.)

(4) Employees who receive gratuities which may not be accepted under the limited circumstances set forth in appendix C shall promptly report the matter to the Designated Agency Ethics Official or Deputy Ethics Official.

(h) *Gifts and donations*. (1) Procedures with respect to gifts from foreign governments are set forth in DLAR 1005.1.[3]

(2) Prohibition of Contributions or Presents to Superiors. DLA personnel shall not solicit a contribution from other DLA personnel for a gift to a superior, make a donation as a gift to a superior, give a gift to a superior, or accept a gift from other DLA personnel subordinate to themselves. This prohibition also applies to gifts, contributions, or donations to immediate family members of a superior. However, this paragraph does not prohibit voluntary gifts of reasonable value or contributions of nominal amounts (or the acceptance thereof) on special occasions such as marriage, illness, transfer, or retirement, provided that any gifts acquired with such contributions will be reasonable in value in view of the occasion.

(i) *Outside employment of DLA personnel*. (1) DLA personnel shall not engage in outside employment or other outside activity, with or without compensation, that:

(i) Interferes with, or is not compatible with, the performance of their Government duties.

(ii) May reasonably be expected to bring discredit on the Government.

(iii) Is otherwise inconsistent with the requirements of part 1293, including the requirements to avoid actions and situations which reasonably can be expected to create the appearance of conflicts of interests.

(2) Enlisted military personnel on active duty may not be ordered or authorized to leave their post to engage in a civilian pursuit, business, or professional activity if it interferes with the customary or regular employment of local civilians in their art, trade, or profession.

(3) Off-duty employment of military personnel by an entity involved in a strike is permissible if the person was on the payroll of the entity prior to the commencement of the strike, and if the employment is otherwise in conformance with the provisions of part 1293.

[3] See footnote 1, to § 1293.3(c)(1)(ii).

After a strike begins and while it continues, no military personnel may accept employment by that involved entity at the strike location.

(4) DLA personnel are encouraged to engage in teaching, lecturing, and writing. However:

(i) DLA personnel shall not, either for or without compensation, engage in activities that are dependent on information obtained as a result of their Government employment, except when: The information has been published or is generally available to the public; or it will be made generally available to the public, and the Director, DLA gives written authorization for the use of nonpublic information on the basis that the use is in the public interest.

(ii) Employment by a DoD contractor is prohibited unless the circumstances are presented to and approval is obtained from the Designated Agency Ethics Official or Deputy Ethics Official stating that such employment does not constitute either a conflict or the appearance of a conflict of interest between the employee's duties and the outside employment.

(j) *Honoraria*. DLA personnel may not accept honoraria for official activities, nor may they suggest charitable contributions in place of honoraria. Even when acting in a personal, rather than official, capacity:

(1) DLA personnel are prohibited from accepting an honorarium of more than $2,000 (excluding travel and subsistence expenses, agent's fees or commissions) for any appearance, speech, or article;

(2) The acceptance of honoraria from groups doing, or seeking to do business with DLA, presents the potential for a conflict of interest or the appearance of a conflict. Before accepting any honorarium, DLA personnel shall consult the Designated Agency Ethics Official, or Deputy Ethics Official.

(k) *Pursuit of outside employment.* (1) When a military officer assigned to DLA or a civilian DLA employee leaves Federal service and begins working for a business with which the officer or employee conducted official business, or one which might have been affected by the officer or employee's performance of official duties, the public may perceive that the public's interest has been compromised. There is the concern that the former officer or employee may have been more interested in future employment than the diligent performance of official duties and protecting the Government's interests. Officers and employees must be sensitive to this public perception when considering future employment opportunities and avoid any action which would cause loss of public confidence in their performance of official duties.

(2) DLA personnel shall not perform any official duties, or otherwise participate in any official matter dealing with any organization with which the DLA employee is pursuing employment, has any arrangement concerning future employment, or has a financial interest. Pursuing employment is not limited to firm offers of employment; it includes any action which could reasonably be construed as an indication of interest in future employment, including sending letters or résumés, telephone discussions, or the consideration of unsolicited proposals from a business entity regarding possible future employment.

(3) All DLA personnel who have contact (regardless of who initiated the contact) regarding possible future employment, or have any arrangement concerning future employment with any organization that may be affected by the performance of their official duties shall immediately report the contact to the Designated Agency Ethics Official or Deputy Ethics Official. So long as the decision on future employment with the organization remains open, DLA personnel must disqualify themselves from participating in any manner in any official action involving that organization. Thus, if a DLA employee mails resumes to multiple organizations, that may be affected by the performance of official duties, the DLA employee must report the sending of resumes, disqualify himself/herself from participating in matters involving those organizations until either the organization or the employee specifically terminates the employment possibilities. Disqualification procedures are set forth in § 1293.7(c).

(l) *Restrictions on the activities of former officers and employees.* Laws and regulations impose restrictions on the

activities of individuals who have ceased Federal employment. Violation of some of the laws and regulations may result in criminal prosecution. It is the obligation of each military officer assigned to DLA and each civilian employee, upon ending Federal service, to review the post employment restrictions in making decisions regarding their post employment activities. Appendix A contains a summary of the laws and regulations which deal with the conduct of DLA officers and employees and the restrictions on the activities of former officers and employees.

§1293.4 Definitions.

(a) *Alternate Agency Ethics Official.* An attorney in the DLA Office of General Counsel who shall serve in the absence of the Designated Agency Ethics Official. The attorney shall be appointed by the General Counsel, DLA.

(b) *Defense contractor.* Any individual, firm, corporation, partnership, association, or other legal entity that enters into a contract directly with the Department of Defense to furnish services, supplies, or both, including construction, to the Department of Defense. Subcontractors are excluded, as are subsidiaries unless they are separate legal entities that contract directly with the Department of Defense in their own names. Foreign governments or representatives of foreign governments that are engaged in selling to the Department of Defense are defense contractors when acting in that context.

(c) *DLA personnel.* All civilian officers and employees of DLA, including special Government employees, and all active duty military officers (commissioned and warrant) and enlisted members of the Army, Navy, Air Force, and Marine Corps, assigned to DLA.

(d) *Deputy ethics officials.* The Counsel of each DLA PLFA and the DLA Counsel, Europe are designated as Deputy Ethics Officials.

(e) *Designated Agency Ethics Official (DAEO).* The General Counsel, DLA is appointed the DLA Designated Agency Ethics Official (DAEO).

(f) *Financial interest.* Any wages, salaries, interest, dividends, or any other form of income or benefit received or to be received in the future by virtue of the relationship; includes potential benefit, such as preemployment contracts with a potential employer; also includes financial interests of a spouse, minor child, and member of household.

(g) *Gratuity.* Any gift, favor, entertainment, hospitality, transportation, loan, or any other tangible item, and any intangible benefits (such as passes, discounts, promotional benefits, vendor training) given or extended to or on behalf of DLA personnel, their spouse, minor child, or member of their household for which fair market value is not paid by the recipient or the U.S. Government.

(h) *Honorarium (and all variations).* A payment of money or anything of value received by an officer or employee of the Federal Government, if it is accepted as consideration for an appearance, speech, or article. The term does not include payment for or provision of actual travel and subsistence, including transportation, accommodations, and meals of an officer or employee and spouse or aide, and does not include amounts paid or incurred for any agent's fees or commissions.

(i) *Special Government employee.* A person who is retained, designated, appointed, or employed to perform, with or without compensation, for a period not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis. The term also includes a Reserve military officer while on active duty solely for training for any length of time, one who is serving on active duty involuntarily for any length of time, and one who is serving voluntarily on extended active duty for 130 days or less. It does not include enlisted personnel.

§1293.5 Significant changes.

Part 1293 has been revised to incorporate changes necessitated by a new DoD Standards of Conduct Regulation and new statutory reporting and postemployment restrictions. The most significant changes relate to the limited circumstances under which DLA personnel can accept gratuities from DoD contractors and in prescribing which employees are required to file DD Forms 1555, Confidential Statement

of Affiliations and Financial Interests. Finally, the provisions of law which require reports of cetain former DLA employees who have left Federal service and are working for certain DoD contractors, as well as certain former DoD contractor employees currently working for DLA, have been incorporated in part 1293 rather than in a separate part, DLAR 7700.3, Reporting Procedures on Defense Related Employment.[4]

§ 1293.6 Responsibilities.

(a) *DLA Wide.* (1) All DLA Employees will: (i) Become familiar with the standards of conduct set forth in part 1293.

(ii) Adhere to the highest standards of honesty and integrity.

(iii) Promptly file financial disclosure reports when required by part 1293.

(iv) Bring suspected violations of a statute or standards of conduct imposed by part 1293 to the attention of the Designated Agency Ethics Official or Deputy Ethics Official in a timely manner.

(v) Report to their immediate supervisor the acceptance of gratuities under the exceptions provisions of appendix C. Failure to submit these reports will be a basis for disciplinary action.

(vi) Refuse to participate in any matters which appear to violate the provisions of appendix A, call the appropriate provisions of appendix A to the attention of any retired or former officer or employee with whom they deal, and advise that any apparent violations will have to be referred to the Department of Justice.

(2) All DLA Supervisors will: (i) Ensure that the position description of each of their immediate subordinates indicates whether the incumbent of the position is required to submit a financial disclosure report (DD Form 1555 or SF 278).

(ii) Ensure that an individual has filed a DD Form 1555 prior to assuming the duties of a position that requires the incumbent to submit the form.

(iii) Annually review the positions of their immediate subordinates to ensure that the position descriptions accurately reflect whether the incumbent is required to file a financial disclosure report (DD Form 1555).

(iv) Review DD Forms 1555 filed by their immediate subordinates to identify any conflict between the employee's private financial interests and official responsibilities, complete the supervisor's statement contained therein, and forward the completed form to the appropriate DLA ethics official. (See appendix E, § 1293.3(g)).

(b) *HQ DLA.* (1) The Heads of HQ DLA Principal Staff Elements will: (i) Remind all personnel in their Directorate/Office at least semiannually of their duty to comply with the required standards of conduct and advise employees that they may obtain clarification of part 1293 from the Office of General Counsel, DLA (DLA–G).

(ii) Report promptly all violations of part 1293 and statutes cited herein to the General Counsel, DLA.

(iii) Review and evaluate the DD Forms 1555 filed by their deputies prior to forwarding them to the General Counsel, DLA.

(iv) Assure that required DD Forms 1555 are filed by officers and employees of their element and forwarded to the General Counsel, DLA, in accordance with part 1293.

(2) The Staff Director, Office of Military Personnel, DLA (DLA–M) will:

(i) Assure that all military personnel, upon assignment to duty with DLA in the Metropolitan Washington area, are informed of the standards of conduct specified in part 1293, and are furnished a copy.

(ii) Maintain a list of all military personnel within the activities furnished personnel services by DLA–M who are required to submit a DD Form 1555.

(iii) Assure that all military officers furnished personnel services by DLA–M, upon separation from active duty when assigned to DLA, are informed of the standards of conduct and post employment restrictions governing former military officers, and are furnished copies of available information and guidance relating to service with DLA.

(3) The Commander, DLA Administrative Support Center (DASC) will: (i)

[4] See footnote 1, to § 1293.3(c)(1)(ii).

Furnish a copy of part 1293 to all civilian personnel receiving personnel services by DASC upon entry to duty.

(ii) Assure that each position description for a civilian employee receiving personnel services from DASC indicates whether the incumbent of that position is required to submit a financial disclosure report (DD Form 1555 or SF 278).

(iii) Maintain a list of all civilian employees in DLA activities furnished personnel service by DASC who are required to submit a financial disclosure report (DD Form 1555 or SF 278).

(iv) Assure that all civilian employees receiving personnel services by DASC, upon their separation from Federal service, are informed of the standards of conduct and post employment restrictions governing former civilian employees, and are furnished copies of available information and guidance.

(4) The General Counsel, DLA will:

(i) Have the authority to modify or supplement any of the enclosures to part 1293 in a manner consistent with the policies set forth in part 1293.

(ii) Provide additional clarification of standards of conduct, post employment restrictions and related laws, rules and regulations, and provide advice and assistance on all matters relating to conflicts of interests.

(iii) Coordinate proper and final disposition of all matters that are not resolved by the supervisor or Deputy Ethics Official relating to matters arising under part 1293.

(iv) Receive, review, approve, and make available to the public all SF 278s required to be filed in accordance with part 1293.

(v) Receive, review, and approve DD Forms 1555 required to be submitted to the General Counsel, DLA after review by supervisors.

(vi) Receive, review, and approve DD Form 1787, Report of DoD and Defense Related Employment, required to be filed under the part 1293.

(vii) Receive reports of any favor, gratuity, or entertainment accepted by DLA personnel as being in the Government's interest, when required to be submitted to the Designated Agency Ethics Official and initiate or recommend action as appropriate.

(viii) Review reports of violations of the standards of conduct statutes or regulations required to be submitted under paragraphs (c)(2)(ii) and (iii) of this section and assure proper action has been taken.

(ix) Initiate procedures and take action in accordance with appendix G, Administrative Enforcement Provisions.

(x) Initiate and maintain a counseling, education, and training program concerning all ethics, standards of conduct, and post-employment matters.

(xi) Periodically evaluate DLA's ethics program and disclosure reporting systems.

(xii) Appoint the Alternate Agency Ethics Official.

(c) *Field activities.* Establishment and maintenance of an effective ethics program is a command responsibility. Commanders shall integrate the DLA ethics program into PLFA operations and procedures and provide sufficient resources to enable the Deputy Ethics Official to administer the PLFA ethics program in a positive and effective manner.

(1) Heads of DLA Primary Level Field Activities will: (i) Assure that all employees, military and civilian, upon their separation from military or Federal service, are informed of the standards of conduct and post employment restrictions governing former military or civilian employees, and are furnished copies of available information and guidance.

(ii) Take action to advise employees that they may obtain clarification of part 1293 from the PLFA Office of Counsel.

(iii) Review and evaluate the DD Forms 1555 submitted by their deputies prior to forwarding them to the General Counsel, DLA.

(iv) Assure that required DD Forms 1555 are filed by officers and employees of their activity and forwarded to the appropriate Deputy Ethics Official, in accordance with part 1293.

(2) The Counsel for each DLA PLFA will: (i) Serve as Deputy Ethics Official and provide advice and assistance on matters relating to standards of conduct, post employment restrictions, and conflicts of interest and related

laws, rules, and regulations arising at the activity.

(ii) Issue advice on the applicability of 10 U.S.C. 2397b to personnel assigned to their activity.

(iii) Forward to DLA–G a report of each suspected violation of the standards of conduct statutes or regulations as required under § 1293.7(a).

(iv) Provide a summary of all reports of violations of the standards of conduct statutes or regulations and the status of each investigation or other action taken to HQ DLA, ATTN: DLA–G. Such reports shall be furnished semiannually, as of 31 March and 30 September each year, and shall be forwarded to reach HQ DLA no later than 10 calendar days after the reporting date. For those violations that are being reported under other procedures, this reporting requirement may be satisfied by a reference to the identifier of the other procedure. This reporting requirement is assigned report control symbol DLA(SA)2217(G).

(v) Review, approve, and retain DD Forms 1555 for personnel of the activity (except the Head of the PLFA and deputy) and all subordinate DLA activities after review by the supervisor.

(vi) Establish a procedure to identify employees within the activity and subordinate activities who are required by part 1293 to file DD Forms 1555.

(vii) By 10 December of each year, notify DLA–G that all employees of the activity required to file DD Forms 1555 as of 30 September of that year have filed the form, and of any apparent conflicts of interest identified on the forms that have not been resolved.

(3) The responsibilities assigned to PLFA Counsel may be delegated to the Counsel of a subordinate activity.

§ 1293.7 Procedures.

(a) *Reporting suspected violations.* DLA personnel who have information which causes them to believe that a violation of the policies, procedures, or standards set forth in part 1293 or of the statutes listed in appendix A is foreseeable or has occurred shall report the matter promptly to the General Counsel, DLA or PLFA Counsel who shall:

(1) Evaluate the report and obtain such additional information as may be necessary.

(2) Refer the matter for investigation or other action as appropriate, or advise the reporter that no further action will be taken.

(3) Forward a report of the matter and any action taken to the General Counsel, DLA within 30 days.

(b) *Resolving violations.* The resolution of real, apparent, or potential standards of conduct violations shall be accomplished promptly by one or more measures, such as divestiture of conflicting interests, disqualification for particular assignments, changes in assigned duties, transfer, reassignment, suspension, termination, or other appropriate action, as provided by statute or administrative procedures (see appendix G).

(c) *Disqualification or Divestiture Procedures*—(1) *Affiliations and Financial Interests.* (i) Any DLA employee who has affiliations or financial interests (which includes those of their spouse, minor children, or members of their households) which create conflicts of interest or the appearance of conflict of interest with their official duties, must immediately disqualify themselves from any official activities that are related to those affiliations or interests of the entities involved. If the individual cannot adequately perform assigned official duties after such disqualification, divestiture will be required or the individual must be moved from that position. The requirement to remedy the conflict or the appearance of a conflict exists independently of the requirement to file a financial disclosure report.

(ii) *Exceptions.* (A) DLA personnel need not disqualify themselves for holding shares of a widely-held, diversified mutual fund or regulated investment company. Such holdings are exempt as being too remote or inconsequential to affect the integrity of the services of DLA personnel.

(B) In limited circumstances, the General Counsel, DLA may exempt, under 18 U.S.C. 208(b), certain affiliations and financial interests if they are deemed not substantial enough to affect the integrity of Government services. Written requests for such exemptions will be processed through the appropriate Deputy Ethics Official.

(2) Written notice of disqualification must be promptly delivered to the employee's immediate supervisor, immediate subordinates, and to the Designated Agency Ethics Official or Deputy Agency Ethics Official.

(3) Supervisors shall periodically review disqualification notices to ensure their effectiveness.

(d) *Financial disclosure procedures.* Many military officers and civilian employees of DLA are subject to one of the financial disclosure reporting systems described below. Persons subject to each are identified below. Detailed instructions on the information to be furnished and the procedures for processing the forms are set out in appendices to this part 1293 and in referenced regulations.

(1) *Executive Personnel Financial Disclosure Report (SF 278).* (i) The following military officers and civilian employees are required by the Ethics in Government Act of 1978 to file a Standard Form 278 if they have served in an identified position for 61 days or more during the preceding calendar year. These individuals need not file a DD Form 1555.

(A) Civilian employees, including special Government employees, whose positions are classified at GS–16 or above of the General Schedule, or whose basic rate of pay under other pay schedules is equal to or greater than the minimum rate of basic pay fixed for GS–16 (except for GS/GM–15s).

(B) Members of the uniformed services whose pay grade is O–7 or above.

(C) Civilian employees in SES or in any other position determined by the Director of the Office of Government Ethics to be of equal classification to GS–16.

(D) The Designated Agency Ethics Official and Alternate Agency Ethics Official.

(ii) Detailed instructions on the information to be furnished and the procedures for processing the forms are set forth in appendix D.

(2) *Statements of Affiliations and Financial Interests (DD Form 1555).* (i) The following DLA personnel are required to submit initial and annual Statements of Affiliations and Financial Interests (DD Form 1555), unless they are subject to the Executive Personnel Financial Disclosure Report (SF 278).

(A) PLFA Commanders, Deputy Commanders and Counsel, and PSE Heads and Deputies.

(B) DLA personnel classified at GS/GM–15 or below, or at a comparable pay level under other authority, and members of the military whose pay grade is below O–7 not otherwise required to file under paragraph (d)(2)(i)(A) of this section, whose official duties require the exercise of judgment in making a Government decision or in taking Government action for contracting or procurement, regulating or auditing private or other non-Federal enterprise, or other activities in which the final decision or action may have an economic impact on any non-Federal entity.

(C) DLA personnel, regardless of grade, in the following positions:

(*1*) Attorneys.

(*2*) Contracting Officers.

(*3*) Supervisory Quality Assurance Representatives and Supervisory Quality Assurance Specialists.

(*4*) Quality Assurance Representative-in-Charge.

(*5*) Supervisory Procurement Agents and Analysts.

(*6*) Supervisory Industrial Property Administrators.

(*7*) Supervisory Industrial Specialists.

(*8*) Supervisory Industrial Engineers.

(*9*) Supervisory Property Disposal Specialists and Property Disposal Officers.

(*10*) Value Engineers and Analysts.

(D) Reserve officers assigned to positions meeting the criteria in paragraphs (d)(2)(i) (B) and (C) of this section.

(E) Other special Government employees as set forth in appendix E.

(ii) Detailed instructions on the information to be furnished and the procedures for processing the forms are set forth in appendix E.

(e) Reporting procedures applicable to former military officers and civilians employees, and to former employees of defense contractors now employed by DLA.

(1) *Defense Related Employment (DD Form 1787)*—(i) *Personnel required to file.* The following individuals are required

to file a Report of DoD and Defense Related Employment (DD Form 1787):

(A) A retired former military officer who served on active duty at least 10 years and who held, for any period during that service, the pay grade of O–4 or above, or a former civilian employee whose pay rate at any time during the 3-year period prior to the end of DoD employment was equal to or greater than a the minimum rate for a GS–13 (GS–12, step 7) and:

(*1*) Within the 2-year period immediately following the termination of service or employment with a DoD Component, is employed by a defense contractor who, during the year before the former officer or employee began employment, was awarded $10,000,000 or more in defense contracts; and

(*2*) Is employed by or performs service for the defense contractor and at any time during a year directly receives compensation of or is salaried at a rate of $25,000 per year or more from the defense contractor (''compensation'' is received by a person if it is paid to a business entity with which the person is affiliated in exchange for services rendered by that person).

(B) Each civilian officer and employee of a DoD Component who:

(*1*) Is employed at a pay rate equal to or greater than the minimum rate for GS–13 (GS–12, step 7), and

(*2*) Within the 2-year period prior to the effective date of service or employment with the DoD Component, was employed by a defense contractor who, during a year, was awarded $10,000,000 or more in defense contracts, and

(*3*) Was employed by or performed services for the defense contractor and at any time during that year received compensation of or was salaried at a rate of $25,000 per year or more at any time during employment (''compensation'' is received by a person if it is paid to a business entity with which the person is affiliated in exchange for services rendered by the person).

(ii) Detailed instructions concerning this reporting requirement are contained in appendix F.

(2) *Statement of Employment (DD Form 1357).* (i) Each retired Regular officer of the Armed Forces shall file with the Military Department in which he or she holds retired status a DD Form 1357, Statement of Employment-Regular Retired Officers (appendix H). The DD Form 1357 should not be filed with DLA. Filing shall be within 60 days after retirement and thereafter within 30 days of changing employer or taking on new duties. The filing requirement continues for 3 years after retirement.

(ii) Additional details concerning this reporting requirement are contained in:

(A) AR 600–50.

(B) SECNAVINST 5370.2.

(C) AFR 30–30.

(D) MCO 5330.3C.

APPENDIX A—LAWS AFFECTING DLA PERSONNEL

I. Caution

Employees and former employees are cautioned that the descriptions of the laws and regulations in this enclosure should not be the only thing relied upon to make decisions regarding their activities. Although the descriptions do provide general guidelines, restrictions are dependent on the specific facts in a particular case. Accordingly, employees and former employees are encouraged to discuss specific cases with the Designated Agency Ethics Official or Deputy Ethics Official in their Office of Counsel, or with private counsel.

II. Conflict of Interest Laws

A. 18 U.S.C. 203

1. Subsection (a) prohibits military officers or civilian employees from directly or indirectly receiving or seeking compensation for services rendered or to be rendered before any department or agency in connection with any contract, claim, controversy or particular matter in which the United States is a party or has a direct and substantial interest. The statute does not apply to enlisted military personnel. The purpose of this law is to reach any situation where the judgment or efficiency of a Government agency might be influenced because of payments or gifts to an officer or employee regardless of whether there is any intent to give preferential treatment in a manner otherwise than provided by law.

2. Subsection (b) makes it unlawful for anyone to offer or to pay the compensation prohibited by subsection (a).

B. 18 U.S.C. 205

1. This law prohibits military officers or civilian employees from acting as an agent or attorney for anyone else before a department, agency, or court in connection with any particular matter in which the United

States is a party or has a direct and substantial interest. The law does not apply to enlisted military personnel.

2. The following exemptions are allowed:

a. The law does not prohibit military officers or civilian employees from giving testimony under oath; from making statements required to be made under the penalty of perjury or contempt; or, from representing another person, without compensation, in a personnel matter such as a discrimination complaint or disciplinary action.

b. The law also authorizes a limited waiver of its restrictions and those of section 203 for an officer or employee, including a special Government employee, who represents his or her parents, spouse, or child, or a person or estate he or she serves as a fiduciary. The waiver is available only if approved by the official making appointments to the position. However, the waiver does not allow the officer or employee to represent any person in matters in which the officer or employee has participated personally and substantially or which are the subject of the officer or employee's official responsibility.

c. Finally, section 205 gives the head of a department or agency the authority to allow a special Government employee to represent his or her regular employer or other outside organization in the performance of work under a Government grant or contract if the department or agency head certifies and publishes in the FEDERAL REGISTER that the national interest requires such representation.

C. 18 U.S.C. 208

1. Subsection (a) prohibits military officers and civilian personnel from their personal and substantial participation as Government personnel in any particular matter in which they, their spouse, their minor children, their partners, their employers, their prospective employers, or their organizations have a financial interest. ''Personal and substantial participation'' includes such things as decision, approval, disapproval, recommendation, the rendering of advice, or investigation. A ''particular matter'' may be less concrete than an actual contract, but is something more specific than rule making or abstract scientific principles. If the individual can reasonably anticipate that his/her Government action, or the decision in which he/she participates or with respect to which he/she advises, will have a direct and predictable effect upon financial interests, then a ''particular matter'' is involved.

2. Subsection (b) permits a written exemption from subsection (a) if the outside financial interest is deemed in advance not substantial enough to affect the integrity of Government services. Categories of financial interests may also be made nondisqualifying by a regulation published in the FEDERAL REGISTER. Shares of a widely held, diversified mutual fund or regulated investment company have been exempted as being too remote or inconsequential to affect the integrity of the services of Government personnel.

D. 18 U.S.C. 209

Subsection (a) prohibits military officers and civilian employees from receiving, and prohibits anyone from paying them, any money as additional compensation for their Government service. The law does not apply to enlisted military personnel. Subsection (b) permits military officers and civilian employees to participate in a bona fide pension plan or other employee welfare or benefit plan maintained by a former employer. Subsection (c) exempts special Government employees and anyone serving the Government without compensation. Subsection (d) exempts contributions, awards, or other expenses under the Government Employees Training Act. See 5 U.S.C. 4111(a).

E. 10 U.S.C. 2397a

This law applies to DoD employees at pay rates of GS–11 or higher (GS–10, Step 4) and to military officers in pay grades O–4 or higher. These employees must report any contact they have had, or will have, with defense contractors regarding future employment with the defense contractor. These employees must also disqualify themselves from any participation in DoD procurements related to the defense contractor. The penalty for violation is a bar from employment with the defense contractor for up to 10 years after Government service and up to a $10,000 penalty.

III. Restriction on Former Military Officers and Civilian Employees

A. Former Officers and Employees Include the Following Personnel:

1. Full-time civilian employees who have left Federal service.

2. Special Government employees who have left Federal service.

3. Retired military officers released from active duty.

4. Reserve military officers released from active duty. The term does not include enlisted personnel; however, enlisted personnel are subject to the restrictions applicable to retired members of the Armed Forces set forth in subparagraph G.

B. Senior employees are those individuals who have been specifically advised by the Designated Agency Ethics Official that they hold senior employee positions. In general, senior employees within DLA include military officers in pay grades O–7 and above, and most Senior Executive Service (SES) positions.

C. General:

1. Laws and regulations restrict the activities of former officers and employees, establish certain reporting requirements, and, in some cases, restrict employment by former officers and employees with DoD contractors. Violation of some of the laws and regulations may result in criminal prosecution, or civil fines.

2. The purpose of the post employment restrictions is to preclude the actual or apparent use of public office for private gain, and to ensure that the administration of Government is conducted honestly and in an impartial manner.

3. The restrictions are divided into five parts; those applicable to all former officers and employees, those applicable to former senior employees, those applicable to retired military officers, and those applicable to all retired members of the Armed Forces. In addition, the special restrictions applicable to personnel who were engaged in ''procurement functions'' are set out. Because of the expansive definition of the term ''procurement function,'' all civilian employees whose grade was GS–12, step 7 or higher, and all military personnel in grades O–4 and above should review the definition of ''procurement function'' set forth in subparagraph H6i below.

4. In addition to the information contained herein, retired military personnel are encouraged to review parallel regulations of their Military Service:

a. Army—AR 600–50.

b. Navy—SECNAVINST 5370.2H.

c. Air Force—AFR 30–30.

d. Marine Corps—MCO 5330.3C.

5. General professional knowledge acquired while in Federal service generally may be used while employed in the private sector. Laws and regulations do, however, restrict activities of former officers and employees which give the appearance of making unfair use of prior Federal employment and affiliations, or are detrimental to public confidence in the Government. In addition, certain former employees who dealt with DoD contractors may be prohibited from working for those contractors.

D. Restrictions Applicable to all Former Officers and Employees:

1. Permanent bar on representation. (18 U.S.C. 207(a).) Former officers and employees (not including former enlisted personnel) may never represent anyone except the United States or communicate with any Government agency with the intent to influence the United States in any matter with which the former officer or employee was personally and substantially involved while a Government employee, and which involves specific parties where the United States either is a party or has an interest.

a. This provision is aimed at your activities representing anyone, whether or not you make a personal appearance before the Government. The intent of the provision is to prevent you from ''switching sides,'' so that information, influence, and access you acquired during Federal service is not subsequently used for improper or unfair advantage in post-employment dealings with the Government.

b. The matters to which this bar applies are those in which you were involved as a Federal employee. Your involvement as a Federal employee must have been of significance to the matter, or must form the basis for a reasonable appearance that it was significant, and may include involvement by any of your subordinates.

c. Matters of general application such as general policy or program design are not included in this bar.

d. The concept of representation is broadly construed and includes any type of communication whose intent is to influence the United States. Representation includes not only acting as another's attorney or agent, but promotional and contract representations as well. Communications include both oral and written communications.

2. Two-year bar on representation. (18 U.S.C. 207(b)(i).) Former officers and employees (not including enlisted personnel) may not, for a 2-year period after departing from Federal service, represent anyone except the United States in any matter which was pending under the former employee's official responsibility during the final year of Federal service. The bar includes communicating with any Government agency with intent to influence the United States on the matter.

a. The only substantive difference between this 2-year bar and the permanent bar described in subparagraph 1. above is the degree of your closeness to, or involvement in, the matter.

b. The term ''official responsibility'' refers to the direct administrative or operating authority, whether intermediate or final, either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

3. Exception for Scientific or Technological Information. The permanent bar and 2-year bar do not apply to communications made solely for the purpose of furnishing scientific or technological information if approved by the head of the agency to which the communication is directed.

E. Additional Restrictions Applicable to Former Senior Employees:

1. *Two-year bar. (18 U.S.C. 207(b)(ii).)* For 2 years after leaving a senior employee position, you may not represent or assist in representing another person by personally appearing at any proceeding before the Government where the matter that is the subject of the proceeding, is one in which you participated personally and substantially while in Federal service.

a. The matters to which this bar applies are those in which you were involved as a Federal employee. Your involvement as a Federal employee must have been of significance to the matter, or must form the basis for a reasonable appearance that it was significant, and may include involvement by any of your subordinates.

b. This restriction does not bar all forms of behind-the-scenes assistance by you, but only assistance in representing or assisting in representing another person while personally present at any type of proceeding.

2. *One-year bar. (18 U.S.C. 207(c).)* For one year after leaving a senior employee position, you may not represent anyone before your former agency, or have any communication with your former agency on any matter which is pending before or of substantial interest to the agency. This restriction, sometimes called the ''no contract'' bar, is intended to provide a ''cooling-off'' period between you and your former agency.

a. This bar applies regardless of the degree of your involvement with the matter.

b. The bar applies to all matters, whether or not specific parties are involved, and includes matters of general application such as general policy or program design.

c. The bar also extends to matters in which your agency has a substantial interest even though the matter may be pending before another agency.

d. The bar is limited to contracts with your former agency and does not apply Government-wide.

e. Your former agency is specifically defined. As it pertains to former DLA senior employees, the term includes DLA and the DoD less:

(1) The Military Departments.

(2) Defense Mapping Agency.

(3) Defense Communications Agency.

(4) Defense Intelligence Agency.

(5) Defense Nuclear Agency.

(6) National Security Agency.

f. There are several exemptions to this one-year bar. The bar does not cover a former senior employee who is: An elected official of a state or local government; an employee of an accredited degree-granting institution of higher education; or, an employee of a nonprofit hospital or medical research organization, provided that the communication, appearance, or representation is on behalf of such government, institution, hospital, or organization. The bar also does not cover purely social or informational communications, the transmission or filing of documents not requiring governmental action, personal matters, representing oneself in any administrative or judicial proceeding, any expression of personal view where the former senior employee has no monetary interest, responses to the former agency's request for information, or participation as the principal researcher or investigator under Government grants.

F. Additional Restrictions Applicable to Retired Regular Military Officers:

1. *Claims against the United States (18 U.S.C. 281)*

a. A retired officer of the Armed Forces may not, for two years after release from active duty, act as an agent or attorney for prosecuting or assisting in the prosecution of a claim against the United States:

(1) Which involves the Military Department in which the officer is retired, or

(2) Which involves any subject matter with which the officer was directly connected while on active duty.

b. The penalty for violating this restriction includes civil and criminal sanctions.

2. *Selling to the United States (18 U.S.C. 281)*

a. A retired officer of the Armed Forces may not, for two years after release from active duty, receive (or agree to receive), either directly or indirectly, any compensation for representating any person in the sale of anything to the United States through the Military Department in which the officer is retired.

b. The penalty for violating this restriction includes civil and criminal sanctions.

3. *Retired Regular Officers*

For 3 years after retirement, a retired Regular officer may not, either for himself/herself or for others, sell, contract, or negotiate to sell, any supplies or war materials to the DoD (or any of its components), Coast Guard, National Oceanic and Atmospheric Administration, or Public Health Service.

a. This 3-year bar does not prohibit all types of employment by, or association with, a company that does business with the Government. The bar is directed only to those activities related to selling which include:

(1) Signing a bid, proposal, or contract.

(2) Negotiating a contract.

(3) Contracting an officer or employee of any of the agencies listed in subparagraph 2.b. above for the purpose of:

(a) Obtaining or negotiating contracts,

(b) Negotiating or discussing changes in specifications, price, cost allowance, or other terms of a contract, or

(c) Settling disputes concerning performance of a contract, or

(4) Any other liaison activity with a view toward the ultimate consummation of a sale although the actual contract therefore is subsequently negotiated by another person.

b. Violations of this bar are punishable by loss of retirement pay for that period of time during which the prohibited activity occurs.

G. Additional Restrictions Applicable to all Retired members of the Armed Forces:

1. *DoD civilian employment.* A retired member of the Armed Forces may not be appointed to a DoD civilian position within 180 days after retirement unless:

a. The employment is approved by the appropriate authority (D0D Directive 1402.1, Employment of Retired Members of the Armed Forces).

b. The position is one for which an advance hiring pay rate has been authorized by the Office of Personnel Management under 5 U.S.C. 5305, or

c. A state of national emergency exists.

2. *Foreign employment.* A retired member of the Armed Forces may not accept any present, emolument, office, title, or employment from any foreign government unless approved by the Secretary of the Military Department concerned and the Secretary of State. The penalty for a violation is loss of retirement pay.

3. *Use of military titles.* Retired members of the Armed Forces may not use their military title in such a way as to give rise to the appearance of sponsorship, sanction, endorsement, or approval of the Military Service or the DoD in connection with any commercial enterprise. Overseas commanders may further restrict the use of military titles by retired personnel in overseas areas.

H. Special Restrictions on the Activities of Former Employees Who Were Engaged in Procurement Functions:

1. Pursuant to 10 U.S.C. 2397b, certain former military officers and civilian employees may not receive compensation from a major defense contractor for a 2-year period, beginning on the date the former officer or employee separated from Federal service. This restriction prohibits the acceptance of compensation from a particular major defense contractor only if the former officer or employee performed the duties listed in subparagraph 2, below, relating to that same defense contractor.

2. *Personnel to whom restrictions apply.* Individuals in the following categories are subject to the restrictions:

a. Civilian employees whose rate of pay was greater than or equal to that for a GS–13, Step 1 (GS–12, Step 7) and military officers in pay grades of O–4 or higher, if such individuals:

(1) Spent the majority of their working days during the last 2 years of DoD service performing a procurement function relating to a DoD contract, at a site or plant that was owned or operated by a contractor, and which was the principal location of their performance of that procurement function; or

(2) Performed, on a majority of their working days during the last two years of DoD service, a procurement function relating to a major defense system and, in the performance of such a function, participated on any occasion personally and substantially in a manner involving decision-making responsibilities with respect to a contract for that major defense system through contact with the contractor.

b. Civilian employees who served in a Senior Executive Sevice position or higher, and military officers who served in the pay grade of O–7 or higher, if such individuals during the last 2 years of DoD service:

(1) Acted as a primary representative of the United States in the negotiation with a defense contractor of a defense contract in an amount in excess of $10,000,000 (the actual contractual action taken by the individual must have been in an amount in excess of $10,000,000), or

(2) Acted as a primary representative of the United States in the negotiation of a settlement of an unresolved claim of such a defense contractor in an amount in excess of $10,000,000. An unresolved claim shall be, for the purposes of part 1293 valued by the greater of the amount of the claim or the amount of the settlement.

3. *Advice from the designated Agency Ethics Official.*

a. Any person may, before accepting compensation, request that PLFA Counsel or the General Counsel, DLA provide advice on the applicability of 10 U.S.C. 2397b and part 1293 to the acceptance of such compensation.

b. A request for advice shall be in writing and shall contain all relevant information.

c. If the PLFA Counsel or General Counsel, DLA receives a request for advice, he shall issue a written opinion in response thereto not later than 30 days after receipt of all relevant information.

d. If the advice rendered by the PLFA Counsel or General Counsel, DLA states that the law and part 1293 are inapplicable, and that the individual may accept the compensation from the contractor, then there shall be a conclusive presumption that the acceptance of the compensation is not a violation of 10 U.S.C. 2397b.

4. *Apparent violations.* Apparent violations. Apparent violations of these prohibitions shall be referred to the General Counsel, DLA who will review the matter for referral to the DoD Inspector General or the Inspector General of the appropriate Military Department for investigation.

5. *Penalties.* Pursuant to 10 U.S.C 2397b(b)(1), individuals who knowingly violate the prohibitions of this section are subject to a civil fine of up to $250,000.

6. *Special definitions.* For the purpose of subparagraph H of this Appendix, terms used shall have the following meanings:

a. *Armed Forces.* The term ''Armed Forces'' does not include the United States Coast Guard.

b. *Compensation.* Includes any payment, gift, benefit, reward, favor, or gratuity which is provided directly or indirectly for services rendered by the person accepting such payment and which has a fair market value in

excess of $250. Compensation shall be deemed indirectly received if it is paid to an entity or person other than the individual, in exchange for services performed by the individual.

c. *Contractor-operated facility.* Includes any facility leased or loaned by the United States to the contractor by written agreement. It does not include facilities located on a military installation where contractor personnel may work, but which is not either leased or loaned by the United States to the contractor by written agreement.

d. *Defense contractor.* An entity that: Contracts directly with the Department of Defense to supply the Department of Defense with goods or services; or, controls or is controlled by an entity that contracts directly with the Department of Defense to supply the Department of Defense with goods or services; or, is under common control with an entity that contracts directly with the Department of Defense to supply the Department of Defense with goods or services. The term does not include an affiliate or subsidiary of an entity that contracts directly with the Department of Defense to supply the Department of Defense with goods or services if the affiliate or subsidiary is clearly not engaged in the performance of a defense contract, nor does it include a state or local government.

e. *DoD component.* The Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Inspector General, and the Defense Agencies, including non-appropriated fund activities.

f. *Employee.* This term does not include a part-time employee, or a Special Government Employee.

g. *Major defense contractor.* Any business entity which, during the fiscal year preceding the fiscal year in which compensation was received, was a defense contractor that received defense contracts in a total amount equal to or greater than $10,000,000.

h. *Major defense system.* A combination of elements that will function together to produce the capability required to fulfill a mission need. Elements may include hardware, equipment, software, or any combination thereof, but excludes construction or other improvements to real property. A system shall be considered a major defense system if: the Department of Defense is responsible for the system and the total expenditures, for research, development, test and evaluation for the system are estimated to exceed $75,000,000 (based on fiscal year 1980 constant dollars) or the eventual total expenditure for procurement exceeds $300,00,000 (based on fiscal year 1980 constant dollars); or, the system is designated a ''major system'' by the head of the agency responsible for the system.

i. *Majority of working days.* The majority of days actually worked during the period, excluding weekends, holidays, days of leave or sick days when the employee did not actually work. A work day on which an individual performed a procurement function includes any day on which the individual worked on that procurement function for any amount of time during that day.

j. *Negotiation and settlement.* Exchange of views between representatives of the Government and a contractor regarding respective liabilities and responsibilities of the parties on a particular contract or claim. It includes deliberations regarding contract specifications, terms of delivery, allowability of costs, pricing of change orders, etc.

k. *Primary Government representative.* If more than one Government representative is involved in any particular transaction, it is the Government employee who supervised the Government's effort in that matter. To act as a ''representative'' requires personal and substantial participation in the transaction, by personal presence, telephone conversation, or similar involvement with representatives of a contractor.

l. *Procurement related function (or ''procurement function'').* Any function relating to: The negotiation, award, administration, or approval of a contract; the selection of a contractor; the approval of a change in a contract; the performance of quality assurance, operational and developmental testing, the approval of payment, or auditing under a contract; or, the management of a procurement program.

m. *Separation of a member of the Armed Forces.* A person who is a retired or former member of the Armed Forces shall be considered to have been separated from service in the Department of Defense on the effective date of the person's discharge or release from active duty.

IV. Other Laws Applicable to DoD Personnel

Engaging in the following activities may subject present and former DLA personnel to criminal or other penalties:

A. Aiding, abetting, counseling, commanding, inducing, or procuring another to commit a crime under any criminal statute (18 U.S.C. 201).

B. Concealing or failing to report to proper authorities the commission of felony under any criminal statute if the person knew of the actual commission of the crime (18 U.S.C. 4).

C. Conspiring with one or more persons to commit a crime under any criminal statute or to defraud the United States, if any party to the conspiracy does any act to effect the object of the conspiracy (18 U.S.C. 371).

D. Lobbying with appropriated funds (18 U.S.C. 1913).

E. Disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918).

F. Disclosure of classified information (18 U.S.C. 793 and 798, 50 U.S.C. 783); and disclosure of trade secrets and other confidential information (18 U.S.C. 1905).

G. Habitual use of intoxicants to excess (5 U.S.C. 7352).

H. Misuse of a Government vehicle (31 U.S.C. 1349(b)).

I. Misuse of the mailing privilege (18 U.S.C. 1719).

J. Deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

K. Committing fraud or making false statements in a Government matter (18 U.S.C. 1001).

L. Mutilating or destroying a public record (18 U.S.C. 2071).

M. Counterfeiting and forging transportation requests (18 U.S.C. 641).

N. Embezzlement of Government money or property (18 U.S.C. 641); failing to account for public money (18 U.S.C. 643); private use of public money (18 U.S.C. 653) and embezzlement of the money or property of another person in the possession of an employee by reason of his/her Government employment (18 U.S.C. 654).

O. Unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

P. Certain political activities (5 U.S.C. 7321–7327 and 18 U.S.C. 600, 601, 602, 603, 606, and 607). These statutes apply to civilian employees; regulations govern military personnel (DoD Directive 1344.10).[5]

Q. Any person (including a special Government employee) who is required to register under the Foreign Agents Registration Act of 1938 (18 U.S.C. 219) may not serve the Government as an officer or employee. The section does not apply to retired Regular military officers who are not on active duty, or Reserves who are not on active duty or who are on active duty for training; or, a special Government employee in any case in which the department head certifies to the Attorney General that his or her employment by the United States Government is in the national interest.

R. Soliciting contributions for gifts or giving gifts to superiors, or accepting gifts from subordinates (5 U.S.C. 7351). This statute applies only to civilian employees; the provisions of §1293.3(h), apply to military personnel.

S. Acceptance of excessive honoraria (2 U.S.C. 441i).

T. Acceptance, without statutory authority, of any present, emolument, office or title, or employment of any kind whatever, from any king, prince, or foreign state by any person holding any office or profit in or trust of the Federal Government, including all retired military personnel and regular enlisted personnel (U.S. Constitution, Art. I., Sec. 9, cl. 8). Exceptions to this prohibition are authorized under 37 U.S.C. 908.

U. Union activities of military personnel (10 U.S.C. 976).

V. Violation of merit system principles (5 U.S.C. 2301).

W. Prohibited personnel practices (5 U.S.C. 2302).

X. Employment of a Regular Navy Officer or a Regular Marine Corps Officer, other than a retired officer, by a person furnishing naval supplies or war materials to the United States (37 U.S.C. 801(a)).

APPENDIX B—CODE OF ETHICS FOR GOVERNMENT SERVICE—PUB. L. 96–303

Any person in Government service should:

I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

II. Uphold the Constitution, laws, and regulations of the United States and of all governments therein and never be a party to their evasion.

III. Give a full day's labor for a full day's pay; giving earnest effort and best thought to the performance of duties.

IV. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or herself or for family members, favors and benefits under circumstances which might be construed by reasonable persons as influencing the performance of governmental duties.

VI. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

VII. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of governmental duties.

VIII. Never use any information gained confidentially in the performance of government duties as a means for making private profit.

IX. Expose corruption wherever discovered.

X. Uphold these principles, ever conscious that public office is a public trust.

APPENDIX C—ADDITIONAL GUIDANCE ON GRATUITIES, REIMBURSEMENTS, AND OTHER BENEFITS FROM OUTSIDE SOURCES

I. General

The general prohibition against accepting gratuities, reimbursements, and other benefits from outside sources does not apply to

[5] See footnote 1, to §1293.3(c)(1)(ii).

the following. These exceptions shall be applied narrowly in keeping with the prohibition in §1293.3(g).

A. The continued participation in employee welfare or benefit plans of a former employee when permitted by law and approved by the General Counsel, DLA, or PLFA Counsel.

B. The acceptance of unsolicited advertising or promotional items that are less than $10 in retail value.

C. The acceptance of trophies, entertainment, prizes, or awards for public service or achievement in an individual, unofficial capacity or given in games or contests that do not relate to official duties and are clearly open to the public generally, or are officially approved for DLA personnel participation.

D. The acceptance of benefits available to the public, such as university scholarships covered by DoD Directive 1322.6, Fellowships, Scholarships, and Grants for Members of the Armed Forces, and free exhibitions by DoD contractors at public trade fairs.

E. The acceptance of discounts or concessions realistically available to all DLA personnel, provided that such discounts or concessions are not used to obtain any item for the purpose of resale at a profit.

F. Participation by DLA personnel in civic and community activities that also involve a DoD contractor, when any relationship between DLA personnel and the contractor is indirect; for example participation in a Little League or Combined Federal Campaign luncheon that is subsidized by a defense contractor.

G. Activities engaged in by DLA personnel with local civic or military leaders as part of authorized community relations programs of DLA.

H. The participation of DLA personnel in widely attended gatherings of mutual interest to Government and industry, sponsored or hosted by industrial, technical, and professional associations (not by individual contractors), provided that they have been approved in accordance with DoD Instruction 5410.20, Public Affairs Relations with Business and Nongovernmental Organizations Representing Business.

I. Situations in which participation by DLA personnel at public ceremonial activities of mutual interest to industry, local communities, and DLA serves the interest of the Government, and acceptance of the invitation is approved by the General Counsel, DLA or PLFA Counsel.

J. When on official Government business and when the DLA personnel reports the circumstances in writing to the immediate supervisor and to the General Counsel, DLA or the PLFA Counsel, as soon as possible:

1. Space available use of previously scheduled ground transportation to or from a DoD contractor's place of business provided by the contractor for its own employees, and

2. Contractor-provided transportation, meals, or overnight accommodations when arrangements for Government or commercial transportation, meals, or accommodations are clearly impracticable.

K. Attendance or participation of DLA personnel in gatherings, including social events such as receptions, which are hosted by foreign governments (when not acting in their DoD contractor capacity) or international organizations, provided that the acceptance of the invitation is approved by the General Counsel, DLA or PLFA Counsel.

L. Customary exchanges of gratituities between DLA personnel and their friends and relatives or the friends and relatives of their spouse, minor children and members of their household, when the circumstances clearly indicate that it is the relationship, rather than the business of the person concerned, that is the motivating factor for the gratuity and it is clear that the gratuity is not paid for by the United States Government or any DoD contractor.

M. Acceptance of coffee, doughnuts, and similar refreshments of nominal value offered as a normal courtesy incidental to the performance of duty. This exception applies to acceptance on an occasional basis and does not authorize acceptance on a recurring basis.

N. The acceptance of benefits resulting from the business activities of a spouse where it is clear that the benefits are given to the spouse in the normal course of the spouse's employment or business and have not been given or made more attractive because of the DLA employee's status. This exception does not, however, alter the requirement for disqualification under §1293.7(c)(1).

O. Acceptance of transportation and related travel expenses from a potential employer in connection with a job interview, provided that prior to departing on the trip:

1. The DLA employee receiving the gratuity notifies his or her immediate supervisor of the travel arrangements.

2. The DLA employee files a written disqualification statement concerning any possible official actions involving the potential employer.

3. The DLA employee submits some evidence that the potential employer offers the same benefits to all similarly situated individuals, not only those employed in the Department of Defense.

P. Situations in which, in the sound judgment of both the individual involved and his or her immediate supervisor, the Government's interest will be served by DLA personnel participating in activities otherwise prohibited. In any such case, a written report of the circumstances shall be made in advance, or, when an advance report is not possible, within 48 hours, by the individual or supervisor to the General Counsel, DLA or PLFA Counsel.

II. Defense Contracting Training

The guidance in subparagraphs A through C of this section applies whenever defense contractors provide training, orientation, or refresher courses to DLA personnel. These courses range from executive orientation courses in which all expenses are borne by the defense contractor to seminars devoted to technical developments in which the only ''gratuity'' may be lectures given free of charge.

A. Attendance by DLA employees at training sessions provided by defense contractors is permitted when the contractor's products or systems are provided under contract to DoD and the training is to facilitate the utilization of those products or systems by DLA personnel.

B. When a defense contractor provides training pursuant to a contract, the training itself is not a gratuity. Likewise, meals, lodging, and transportation would not be considered a gratuity if the defense contractor was required to furnish them under the terms of the contract, but would result in reductions to the travel and other expenses normally payable to the employee under the Joint Federal Travel Regulation. However, if the defense contractor, without charge, provides something to DLA personnel which is not required by the contract, the contractor is giving a gratuity to the DLA employee.

C. Attendance at tuition-free training, refresher courses, or other educational meetings offered by a defense contractor (although not required to do so by the terms of a contract) may be authorized when attendance is clearly in the best interests of the Government and meets the following criteria of DLAR 1430.12, Civilian Employee Development and Training:[6]

1. Selection of the DLA employees attending the contractor training will be made by the Government.

2. The unavailability of alternative training sources, and confidence that the contractor provided training will not adversely affect the objectivity of the DLA employee.

3. Approval of the training is at a sufficiently high level to assure the need cannot otherwise reasonably be met and has the concurrence of the General Counsel, DLA or PLFA Counsel.

4. No appreciable cost is incurred by the contractor in order to accommodate attendance by DLA employees.

5. An understanding that the contractor will receive no special consideration or benefit because of the Government's participation.

III. Reimbursements

DLA personnel may not accept either personal reimbursement or in kind accommodations, subsistence, transportation, or services for expenses incident to official travel, from any source outside the Government except as indicated in subparagraphs A through F of this section. In cases where acceptance is authorized, appropriate deductions will be made in the travel, per diem, or other allowances payable to the employee. In no event will DLA personnel accept benefits which are excessive.

A. A DLA employee who is to be a speaker, panelist, project officer, or other bona fide participant in the activity attended, may accept accommodations, subsistence, transportation, or other services furnished in-kind in connection with official travel when such attendance and acceptance are authorized by the order-issuing authority as being in the overall Government interest. Under these circumstances, an employee may not accept personal reimbursement.

B. When a DLA employee is summoned to testify in an official capacity on behalf of a private party at a judicial proceeding, the appearance will be on official time and travel expenses may be accepted from the court, authority, or party who caused the person to be summoned. In accordance with 5 U.S.C. 5751, the funds may be turned over to the agency and Government travel orders issued or the employee may use the funds to defray costs directly. Any excess funds must be returned to the party or paid into the U.S. Treasury as miscellaneous receipts. Any employee appearing on behalf of a private party not in an official capacity must use leave to do so and may retain any fees or expenses.

C. Except as indicated in subparagraphs A and B of this section, DLA personnel may not accept personal reimbursement from any source for expenses incident to official travel, unless authorized by their supervisor consistent with guidance provided by the Designated Agency Ethics Official or Deputy Ethics Official pursuant to 5 U.S.C. 4111 or other statutory authority. Rather reimbursement must be made to the Government by check payable to DLA.

D. DLA personnel may accept travel, or reimbursement for travel expenses from a foreign government as provided in DLAR 1005.1, Decorations and Gifts from Foreign Governments.

E. When accommodations, subsistence, or services in kind are furnished to DLA personnel by non-U.S. Government sources, consistent with this paragraph, appropriate deductions shall be reported and made in the travel, per diem, or other allowance payable.

F. DLA personnel who receive gratuities, or have gratuities received on their behalf, in circumstances not in conformance with the standards of part 1293, shall promptly report the circumstances to the Designated Agency Ethics Official or Deputy Ethics Official for disposition determination.

[6] See footnote 1, to § 1293.3(c)(1)(ii).

IV. Ship Launch and Similar Ceremonies

The following guidance applies to ceremonies and gifts associated with the launch or commissioning of a naval vessel, an aircraft or other vehicle, and all similar events:

A. Attendance at Ceremonies

Acceptance of an invitation to attend a ceremony shall be approved by the Head of the PSE or PLFA. Attendance is permitted at appropriate functions incident to the ceremony, such as a dinner preceding the ceremony and the reception following it, as long as the function is not lavish, excessive, or extravagant.

B. Acceptance of Gifts

DLA personnel, their spouses, and their dependent children, who are official participants may accept a tangible thing of value as a gift or memento in connection with the ceremony as long as its retail value does not exceed $100 per family and the cost is not borne by the Government. When a gift exceeds the $100 limit the recipient shall pursue one of the following alternatives:

1. Return the gift to the donor.

2. Retain the gift after reimbursing the donor the full value of the gift.

3. Forward the gift to the Staff Director, Administration (DLA–X) for disposition as a gift to the Government in accordance with statute.

APPENDIX D—EXECUTIVE PERSONNEL FINANCIAL DISCLOSURE REPORT (SF 278)

I. DLA Personnel Required to File SF 278

A. DLA personnel required to file a Financial Disclosure Report (SF 278) are listed at §1293.7(d)(1). These personnel occupy ''covered positions.''

B. A person who is nominated to or assumes a covered position is not required to file an SF 278 if the Secretary of Defense or the General Counsel, DLA determines that the person is not reasonably expected to perform the duties of the position for more than 60 days in the calendar year. However, if the person performs the duties of the office or position for more than 60 days in the calendar year, an SF 278 shall be filed within 15 days after the 61st day of duty.

C. A person otherwise required to file an SF 278, but who is expected to perform the duties of the position for less than 130 days in the calendar year, may request a waiver of any or all reporting requirements from the Director, Office of Government Ethics, if the person is not a full-time employee of the Government, is able to provide specially needed services, and does not have outside employment or financial interests likely to create a conflict of interest. A request for a waiver shall be initially submitted to the General Counsel, DLA.

II. Time of Filing

An SF 278 shall be submitted under the circumstances described below.

A. Assumption Report

DLA personnel shall submit a SF 278 to the General Counsel, DLA before assuming a covered position. This requirement does not apply if the individual has left another covered position within 30 days before assuming a new position, or already has filed with respect to nomination for the new position.

B. Annual Report

DLA personnel, including special Government employees, occupying a covered position for more than 60 days during a calendar year shall submit an SF 278 annually. The annual report must be filed with the General Counsel, DLA not later than 15 May unless a written extension is granted.

C. Termination Report

DLA personnel occupying a covered position shall submit an SF 278 to the General Counsel, DLA no sooner than 15 days before and no later than 30 days after the date of departure from that position unless they accept another covered position. The termination report will cover the portion of the present calendar year up to the date of termination and, if the annual report has not yet been filed, the preceding calendar year.

III. Contents of Reports

Instructions for completing SFs 278 are included as part of the report forms. Additional guidance for personnel in covered positions is available from the General Counsel, DLA.

IV. Submission and Review of Reports

A. Reports will be submitted to the General Counsel, DLA. After final review, copies of the reports of military officers assigned to DLA will be forwarded by the General Counsel, DLA to the appropriate Military Department official.

B. Final review of an SF 278 is completed when the Genral Counsel, DLA has signed the SF 278, indicating that each item is completed and that the report discloses no unresolved conflict or appearance of a conflict of interest under applicable laws and regulations.

1. If the General Counsel, DLA, after reviewing an SF 278, believes additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the General Counsel, DLA.

2. If the General Counsel, DLA, after reviewing the SF 278, is of the opinion, on the

basis of information submitted, that the reporting person is not in compliance with applicable laws and regualtions, the following steps shall be taken:

a. The person shall be notified in writing of the preliminary determination.

b. After an opportunity for personal consultation, if practicable, the General Counsel, DLA shall notify the person in writing of the remedial measures that should be taken to bring the person into compliance. The notification shall specify a date by which such measures must be taken, which, except in unusual circumstances, must be taken within 90 days.

(1) When the General Counsel, DLA determines that a reporting person has fully complied with the remedial measures, a notation to that effect shall be made in the comment section of the SF 378. The General Counsel, DLA shall then sign and date the SF 278 and send written notice of that action to the person.

(2) If steps assuring compliance with applicable laws and regulations are not taken by the date established, the General Counsel, DLA shall report the matter to the Director, DLA for appropriate action. The Office of Government Ethics and the Attorney General shall also be notified.

3. Remedial action may include the following measures:

a. Disqualification.

b. Limitation of duties.

c. Divestiture.

d. Transfer or reassignment.

e. Resignation.

f. Exemption under 18 U.S.C. 208.

g. Establishment of a qualified blind trust.

V. Public Availability of SFs 278

A. SFs 278 must be made available for public examination upon request 15 days after the report is filed unless otherwise exempted pursuant to law. Receipt of the report by the General Counsel, DLA for final review constitutes official filing and establishes the date from which the 15 days shall run. In most cases, this means the reports are available to the public before final review is completed. Reporting persons are personally responsible for ensuring that their reports are accurate, complete, and timely.

B. Any request for an SF 278 must be in writing and state:

1. The person's name, occupation, and address.

2. The name and address of any other person or organization on whose behalf the inspection or copy is requested.

3. That the person is aware that it is unlawful to obtain or use the report for:

a. Any unlawful purpose.

b. Any commercial purpose, other than by news and communications media for dissemination to the general public.

c. Determining or establishing the credit rating of any individual.

d. Use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

VI. Retention of SFs 278

SFs 278 shall be retained for 6 years from the date of filing.

VII. Penalties

Compliance with the financial disclosure provisions shall be enforced by adminstrative, civil, or criminal remedies, which include:

A. Action Within the DoD Component

The Director, DLA may take appropriate action, including a change in assigned duties or adverse action, in accordance with applicable law or regulation, against any person who fails to file an SF 278, or who falsifies or fails to report required information.

B. Action by the Attorney General

The General Counsel, DLA is required to refer to the Attorney General the name of any person whom he or she has reasonable cause to believe has failed willfully to file an SF 278 on time or has falsified or failed willfully to file information required to be reported. Such referral does not bar additional administrative or judicial enforcement. The Attorney General may bring a civil action in the U.S. District Courts against any person who knowingly and willfully falsifies or fails to file or report any required information. The court may assess a civil penalty not to exceed $5,000. Knowing or willful falsification of information required to be filed also may result in criminal prosecution under 18 U.S.C. 1001, leading to a fine of not more than $10,000, or imprisonment for not more than 5 years, or both.

C. Misuse of Reports

1. The Attorney General may bring a civil action against a person who obtains or uses an SF 278 filed under the Ethics in Government Act for any of the following reasons:

a. Any unlawful purpose.

b. Any commercial purpose, other than by news and communications media for dissemination to the general public.

c. Determining or establishing the credit rating of any individual.

d. Directly or indirectly, for the solicitation of money for any political, charitable, or other purpose.

2. The court in which such action is brought may assess a penalty in any amount not to exceed $5,000. This is in addition to any other legal remedy available.

APPENDIX E—REQUIREMENTS FOR SUBMISSION OF DD FORM 1555, STATEMENT OF AFFILIATIONS AND FINANCIAL INTERESTS

I. DLA Personnel Required To Submit Statements

A. DLA personnel required to file Statements of Affiliations and Financial Interests (DD Forms 1555) are those indicated in §1293.7(d)(2).

B. Special Government Employees (as defined in §1293.4(i)).

1. Special Government employees, including Reserve military officers assigned to positions requiring the submission of a DD Form 1555 shall file a DD Form 1555 prior to performing the duties of the position.

2. The following categories of special Government employees are not required to file DD Forms 1555 unless they are specifically notified that they must do so:

a. Physicians, dentists, and allied medical specialists engaged only in providing service to patients.

b. Veterinarians providing only veterinary services.

c. Lecturers participating only in educational activities.

d. Chaplains performing only religious services.

e. Individuals in the motion picture and television fields who are utilized only as narrators or actors in DLA productions.

f. A special Government employee who is not a ''consultant'' or ''expert'' as those terms are defined in the Federal Personnel Manual, chapter 304.

II. Review of Positions

Immediate supervisors shall annually review each civilian and military position under their supervision, determine whether the position requires the incumbent to file a DD Form 1555, and will notify each employee of the determination. The position description of each position shall state whether or not the incumbent must file a DD Form 1555. Any individual may request a review of the determination requiring submission of a DD Form 1555 from the Deputy Ethics Official. In the event the employee is dissatisfied with this decision, there is an appeal right to the Designated Agency Ethics Official, whose decision shall be final.

III. Manner of Submission

A. Time of Submission

1. Employees will file a DD Form 1555 for review and approval prior to performing the duties of a position that requires filing of a DD Form 1555. Reserve Officers shall file the form upon reporting for duty. If an employee has filed a DD Form 1555 by virtue of a previous position, a copy of the previously submitted form may be submitted to the new supervisor for review rather than filing a new DD Form 1555.

2. DD Forms 1555 shall annually be filed by 31 October each year for all affiliations and financial interests as of the 30th of September of that year. Even if no changes occur from the previous year, a new and complete DD Form 1555 is required to be filed each year.

3. *Excusable Delay*. When required by reason of duty assignment or infirmity, a supervisor may grant an extension of time with concurrence of the DAEO or Deputy Ethics Official. Any extension in excess of 30 days requires the concurrence of the Designated Agency Ethics Official. Any late DD Forms 1555 shall include appropriate notation of any extension of time granted hereunder.

B. To Whom Submitted

1. *HQ DLA*. a. Heads of PSEs required to file DD Forms 1555 will submit them through the General Counsel, DLA to the Director, DLA.

b. Deputy Heads of PSEs required to file DD Forms 1555 will submit them to the Head of the PSE for review and evaluation. After resolution of any conflict, the DD Forms 1555 will be forwarded to the General Counsel, DLA.

c. Other officers and employees of HQ DLA, and their management support activities, will submit DD Forms 1555 to their immediate supervisor for review and evaluation. Upon completion of their review and resolution of any conflicts, supervisors will forward the DD Forms 1555 to the General Counsel, DLA.

2. *Field activities with assigned DLA Counsel.* a. Heads of PLFAs required to file DD Forms 1555 will submit them through the General Counsel, DLA to the Director, DLA.

b. Deputy Heads of PLFAs required to file DD Forms 1555 will submit them to their immediate supervisors for review and evaluation. After resolution of any conflict, the forms will be submitted to the General Counsel, DLA.

c. Other officers and employees of PLFAs or subordinate activities required to file DD Forms 1555 will submit them to their immediate supervisors for review and evaluation. After resolution of any conflict, the forms will be forwarded to the appropriate Deputy Ethics Official.

d. Counsel for PLFAs will submit DD Forms 1555 to the Head of the PLFA for review and evaluation. After resolution of any conflict, the forms will be forwarded to the General Counsel, DLA.

e. Heads of DLA activities subordinate to PLFAs, when required to file DD Forms 1555, will submit the forms to the Head of the PLFA, who will review and evaluate, and forward to the appropriate Deputy Ethics Official after resolution of any conflict.

f. Counsel for DLA activities subordinate to a PLFA will submit DD Forms 1555 to the activity Head for review, evaluation, and resolution of any conflict. The forms will be forwarded to the Counsel of the PLFA.

3. *Management Support Activities.* a. Heads of Management Support Activities will submit DD Forms 1555 to their immediate supervisors for review and evaluation. After resolution of any conflict, the forms will be submitted to the General Counsel, DLA.

b. Other officers and employees of Management Support Activities will submit them to their immediate supervisors for review and evaluation. After resolution of any conflict, the forms will be forwarded to the Deputy Ethics Official of the PLFA providing personnel services to the Management Support Activity.

4. *Detailed employees.* Agreements with other DoD Components and Government agencies shall contain a requirement that the other Component agency shall, within 60 days, forward to the General Counsel, DLA a copy of the detailed individual's DD Form 1555, if required, and notice concerning the disposition of any conflict or apparent conflict of interest indicated.

C. Content of Report

1. Instructions for completing the DD Form 1555 are included as a part of the form. Additional guidance may be obtained from the Designated Agency Ethics Official or Deputy Ethics Official.

2. The interest of a spouse, minor child, or any member of the employee's household shall be reported as if it were the interest of the employee. The interests of a spouse need not be reported if the employee and spouse have:

a. A final decree of separation,

b. An interim or interlocutory decree, or

c. A separation agreement formally executed by the employee and spouse in anticipation of its incorporation into a final decree of divorce or separation.

3. DLA personnel are not required to submit on a DD Form 1555 any information relating to their connection with or interest in a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization, or a similar organization not conducted as a business for profit. However, educational or other institutions doing research and development or related work involving grants of money or contracts with the Government must be reported.

4. Ownership of personal savings or checking accounts in financial institutions, shares in credit unions or savings and loan associations, life or property insurance policies and shares in widely held diversified mutual funds or regulated investment companies need not be reported.

5. An employee need not disclose the assets of, sources of income of, or transactions of, a trust if:

a. The trust is a qualified blind or qualified diversified trust certified by the Office of Government Ethics and is otherwise reported on the DD Form 1555 by name of trust and date of execution, or

b. The trust is an ''excepted'' trust, defined as follows:

(1) A trust that was not created by the DLA employee, or the employee's spouse, or dependent child:

(2) A trust that consists of withholdings or sources of income of which the officer or employee, or spouse, or dependent child have no knowledge, and

(3) Which is disclosed as an asset or income source on the report.

6. DLA personnel shall request submission on their behalf of required information known only to other persons; for example, holdings of spouse or other members of the household, executor of any estate, or trustee. The submissions may be made with a request for confidentiality that will be honored even if it includes a limitation on disclosure to the DLA employee concerned.

D. *Confidentiality of DD Forms 1555 of DLA personnel.* Each DD Form 1555 shall be held in confidence. Information from a DD Form 1555 may not be disclosed except as the Designated Agency Ethics Official or the Office of Government Ethics may determine for good cause. Persons designated to review the DD Forms 1555 are responsible for maintaining the statements in confidence and shall not allow access to or disclosure from the DD Forms 1555 except to carry out the purpose of part 1293.

E. *Effect of statements on other requirements.* The DD Form 1555 required of DLA personnel is in addition to, and not in substitution for, any similar requirement imposed by statute, Executive Order, or regulation. Submission of a DD Form 1555 does not permit DLA personnel to participate in matters in which their participation is prohibited by statute, Executive Order, or regulation.

F. *Review of DD Forms 1555.* 1. The filing employee's immediate supervisor reviews the DD Form 1555 to evaluate whether there is a conflict or apparent conflict between the employee's private financial interests and his or her official responsibilities. The immediate supervisor records the results of the evaluation in block 13. Heads of PSEs and PLFAs will perform the initial review of their deputies' DD Forms 1555 before forwarding them to the General Counsel, DLA. Heads of PLFAs perform the initial review of the PLFA Counsel's forms. After review and completion of the supervisor's statement, the DD Form 1555 should be forwarded to the Designated Agency Ethics Official or Deputy Ethics Official, as appropriate, for final review and filing.

2. DD Forms 1555 shall be reviewed to assure that:

a. Each item is completed, and

b. No interest or position disclosed on the form violates or appears to violate any of the following:

(1) Any applicable provision of chapter 11 of title 18 of the United States Code (part 1).

(2) The ''Ethics in Government Act of 1978,'' as amended, and any regulations promulgated thereunder.

(3) Executive Order 11222 as amended, and any regulations promulgated thereunder.

(4) Any other related statute or regulation applicable to the employees of the agency.

3. The supervisor need not audit the report to ascertain whether the disclosures are correct; disclosures are to be taken at ''face value'' unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report. The supervisor's signature shall signify that he or she has found that the information in the report discloses no conflict of interest under applicable laws and regulations and that the report fulfills the requirements set out in IIIF2, above.

4. If the supervisor believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted.

5. Whenever the supervisor's review of a DD Form 1555 discloses a conflict or an apparent conflict of interest, the employee concerned will be given an opportunity to explain the conflict or apparent conflict to the immediate supervisor. Resolution of a conflict or apparent conflict will be made under §1293.7(b). If the conflict or apparent conflict cannot be resolved by the supervisor, it will be forwarded, along with a copy of the employee's current position description, to the Designated Agency Ethics Official or Deputy Ethics Official, as appropriate, for resolution.

6. If the supervisor concludes that the report is completed properly and that no item violates, or appears to violate, applicable statute or regulation, then such official shall sign and date the report.

G. *Remedial action.*

1. Whenever the designated Agency Ethics Official or Deputy Ethics Official concludes that the filing individual is not in compliance with applicable laws or regulations, the Designated Agency Ethics Official or Deputy Ethics Official shall do the following:

a. Notify the reporting individual of the preliminary determination.

b. Afford the reporting individual an opportunity for personal consultation, if practicable.

c. Determine what remedial action should be taken to bring the reporting individual into compliance.

d. Notify the reporting individual of the remedial action required, indicating a date by which that action must be taken.

2. Except in unusual situations, which must be documented fully to the satisfaction of the appropriate ethics official, remedial action shall be completed within 90 days from the date the reporting individual was notified that the action is required.

3. Remedial action includes any of the following measures:

a. Disqualification.

b. Limitation of duties.

c. Divestiture.

d. Transfer or reassignment.

e. Resignation.

f. Exemption under 18 U.S.C. 208.

g. Establishment of a qualified blind trust.

4. When the ethics official determines that a reporting person has complied fully with the remedial measures, a notation to that effect shall be made in the comment section of the DD Form 1555. The ethics official then shall sign and date the form and send written notice of that action to the reporting individual.

5. If steps ensuring compliance with applicable laws and regulation are not taken by the date established, the ethics official shall report the matter to the General Counsel, DLA for appropriate action.

H. *Retention of statements.* DD Forms 1555 shall be retained for 6 years from the date of filing.

I. *Penalties*—1. *Administratives penalties.* Any individual failing to file a report or falsifying or failing to file required information, may be subject to any appropriate personnel or other action in accordance with applicable law or regulation, including adverse action.

2. *Criminal liability.* Any individual who knowingly or willfully falsifies information on a report required to be filed under this enclosure also may be subject to criminal prosecution under 18 U.S.C. 1001.

APPENDIX F—REPORTING PROCEDURES FOR DOD AND DEFENSE RELATED EMPLOYMENT

I. Personnel Required To File

The following military officers and civilian employees are required to file a Report of DoD and Defense Related Employment (DD Form 1787):

A. A retired military officer who served on active duty at least 10 years and who held, for any period during that service, the pay grade of O–4 or above, or a former civilian employee whose pay rate at any time during the 3-year period prior to the end of DoD employment was equal to or greater than the minimum rate for a GS–13 (GS–12, step 7), and who:

1. Within the 2-year period immediately following the termination of service or employment with a DoD Component, is employed by a defense contractor who, during the year before the former officer or employee began employment, was awarded $10,000,000 or more in defense contracts; and

2. Is employed by or performs services for the defense contractor and at any time during a year directly receives compensation of or is salaried at a rate of $25,000 per year or more from the defense contractor (*compensation* is received by a person if it is paid to a business entity with which the person is affiliated in exchange for services rendered by that person).

B. Each civilian employee of a DoD Component who:

1. Is employed at a pay rate equal to or greater than the minimum rate for GS–13 (GS–12, step 7),

2. Within the 2-year period prior to the effective date of service or employment with the DoD Component, was employed by a defense contractor who, during a year, was awarded $10,000,000 or more in defense contracts, and

3. Was employed by or performed services for the defense contractor and at any time during that year received compensation from or was salaried at a rate of $25,000 per year or more at any time during employment (*compensation* is received by a person if it is paid to a business entity with which the person is affiliated in exchange for services rendered by the person).

II. Content of Report

Instructions for completing DD Forms 1787 are included as part of the form. A DD Form 1787 appears at the end of this appendix. Additional guidance for personnel required to file is available from the Designated Agency Ethics Official (DAEO) or Deputy Ethics Official.

III. Submission and Review of Reports

A. Time of Filing

1. Current military officers and civilian employees shall file a DD Form 1787 within 30 days after entering employment or service with any DoD Component.

2. Former officers and employees shall file an initial report within 90 days after the date on which the individual began employment with the defense contractor.

3. Former officers and employees shall file subsequent reports each time, during the 2-year period after service or employment with the DoD Component ended, that the person's duties with the defense contractor significantly changes or the person begins employment with another defense contractor. Such reports shall be filed within 30 days after the date of the change.

B. Submission

1. Civilians shall submit their reports to the General Counsel, DLA

2. Former military officers shall submit their report in accordance with the procedures set forth in the following:

a. *Army*— AR 600–50, Standards of Conduct for Department of the Army personnel.

b. *Navy*—SECNAVINST 5314.5A, Reporting Procedures on Defense Related Employment.

c. *Air Force*— AFR 30–14, Procedures for Reporting on Defense Related Employment.

3. The General Counsel, DLA shall review DD Forms 1787 to assure that:

a. Each item is completed, and

b. No interest or position disclosed on the form violates or appears to violate the following:

(1) Any applicable provision of chapter 11 of title 18 U.S.C. (part 1).

(2) The ''Ethics in Government Act of 1978,'' as amended, and any regulations promulgated thereunder.

(3) E.O. 11222 as amended, and any regulations promulgated thereunder.

(4) Any other related statute or regulation applicable to the employees of DLA.

4. The reports need not be audited to ascertain whether the disclosures are correct; disclosures are to be taken at ''face value'' unless there is a patent omission or ambiguity or the General Counsel, DLA has independent knowledge of matters outside the report.

5. If the General Counsel, DLA believes that additional information is required, the reporting individual shall be notified of the additional information required and the date by which it must be submitted. The reporting individual shall submit the required information directly to the General Counsel, DLA.

6. If the General Counsel, DLA concludes that the report is completed properly and that no item violates, or appears to violate, applicable statute or regulation, then the reports shall be signed and dated.

IV. Remedial Action

A. If the General Counsel, DLA concludes that the filing individual is not in compliance with applicable laws or regulations, he shall:

1. Notify the reporting individual in writing of the preliminary determination;

2. Afford the reporting individual an opportunity for personal consultation, if practicable;

3. Determine what remedial action should be taken to bring the reporting individual into compliance; and

4. Notify the reporting individual in writing of the remedial action required, indicating a date by which that action must be taken.

B. Except in unusual situations, which must be fully documented to the satisfaction

of the General Counsel, DLA, remedial action shall be completed within 90 days from the date the reporting individual was notified that the action is required.

C. Remedial steps may include the following measures:

1. Disqualification.
2. Limitation of duties.
3. Divestiture.
4. Transfer or reassignment.
5. Resignation.
6. Exemption under 18 U.S.C. 208(b).
7. Establishment of a qualified blind trust.

D. When the General Counsel, DLA determines that a reporting person has fully complied with the remedial measures, a notation to that effect shall be made in the comment section of the DD Form 1787. The General Counsel, DLA shall then sign and date the DD Form 1787 and send written notice of that action to the reporting individual.

E. If steps assuring compliance with applicable laws and regulations are not taken by the date established, appropriate remedial action shall be instituted. The Office of Government Ethics shall be notified of the remedial action taken.

V. Public Availability of Reports

DD Forms 1787 must be made available for public examination upon request 15 days after the report is filed unless otherwise exempted pursuant to law. Receipt of the report for final review constitutes official filing and establishes the date from which the 15 days shall run. In most cases, this means the reports are available to the public before final review is completed. Reporting persons are personally responsible for ensuring that their reports are accurate, complete, and timely.

VI. Retention of Reports

DD Forms 1787 shall be retained for 6 years from the date of filing.

VII. Penalties

A. Administrative penalties

Any individual failing to file a report or falsifying or failing to file required information, may be subject to any appropriate personnel or other action in accordance with applicable law or regulation, including adverse action. Administrative penalty of up to $10,000 may also be imposed.

B. Criminal Liability

Any individual who knowingly or willfully falsifies information on a report required to be filed under this subpart may be also be subject to criminal prosecution under 18 U.S.C. 1001.

APPENDIX G—ADMINISTRATIVE ENFORCEMENT PROVISIONS

I. Applicability and Scope

A. These provisions shall apply to all DLA Activities.

B. This appendix is adopted pursuant to 18 U.S.C. 207 and 10 U.S.C. 2397, 2397a, and 2397c which require the Department of Defense to develop administrative procedures for the review and disposition of reported violations of post employment restrictions and reporting requirements.

C. The procedures set forth in this appendix may be used, at the discretion of the General Counsel, DLA, to accomplish administrative enforcement of all statutes and regulations which would require or allow their use.

II. Policy

A. Administrative Procedure Act (APA)

In cases in which an APA hearing is required by statute, APA rules shall be used.

B. Rules of Evidence

In the discretion of the hearing examiner, the rules of evidence may be relaxed from those established in the Federal Rules of Evidence. Evidence must be relevant and material to be considered.

C. Burden of Proof

The DLA bears the burden of proof. A violation must be established by substantial evidence.

D. Protection of Privacy

The privacy of suspected individuals or entities shall be protected by safeguarding information concerning allegations and evidence, especially before initiation of administrative disciplinary action.

E. Reporting Suspected Violations

1. If any DLA officer or employee has reason to suspect that an individual or entity has violated a statute or regulation referred to in part 1293 the suspicion shall be reported immediately to the General Counsel, DLA or to the Counsel of the PLFA affected.

2. If other individuals have reason to suspect that an individual or entity has violated a statute or regulation, the suspicion may be reported to any DoD officer or employee.

III. Responsibilities

A. The General Counsel, DLA, shall:

1. Administer the provisions of this appendix.

2. Receive reports of alleged violations from the Inspector General, Department of Defense (IG, DoD).

3. Receive memoranda of results of preliminary investigations from the IG, DoD.

4. Review copies of reports and memoranda from the IG, DoD, to determine if it is reasonable to believe there may have been a violation.

5. Provide copies of reports and memoranda regarding cases where it is reasonable to believe there may have been a violation, to the Director, Office of Government Ethics (OGE).

6. Provide copies of reports and memoranda regarding cases where it is reasonable to believe there may have been a violation, to the Criminal Division, Department of Justice (DoJ).

7. Coordinate investigations and administrative disciplinary actions with the DoJ Criminal Divisions, unless DoJ advises that criminal proceedings will not be pursued.

8. Initiate administrative disciplinary action, in cases where it is reasonable to believe there may have been a violation, by providing the suspected individual or entity with notice as described in IVB, below.

9. Request the Heads of DLA PLFAs or PSEs in which the case arose to appoint a Government representative to present evidence of violations.

10. In cases not subject to the APA, appoint a hearing examiner.

11. Receive written appeals from suspected individuals or entities.

12. Make appeal decisions, when appeals are timely submitted, after reviewing the findings of facts and decision of the hearing examiner and the appeal.

13. Impose administrative disciplinary sanctions when applicable.

14. Mail copies of appeal decisions and/or any sanctions to be imposed to the suspected individuals of entities along with statements notifying of the right to seek judicial review of administrative decisions.

15. Submit written reports of suspected violations, when the information regarding the violations is not frivolous, directly to the IG, DoD, and not through ordinary DoD Component channels.

B. The Hearing Examiner shall:

1. Hear each case in accordance with the hearing procedures specified in subparagraph 4, of this section IV.

2. Make a written report of all findings of fact and conclusions of law, including mitigating factors.

3. Make a written decision and recommendation of administrative disciplinary sanctions to be imposed.

4. Submit the report, the decision, and any recommendations to the General Counsel, DLA through the Head of the cognizant PLFA or PSE.

5. Mail a copy of the report, the decision, and any recommendations to the suspected individual and General Counsel, DLA.

IV. Procedures

A. Initiation of Administrative Disciplinary Action

1. Administrative disciplinary actions are initiated by providing suspected individuals or entities with notice of the report of a violation and notice of the intention to begin administrative disciplinary proceedings at least 20 calendar days prior to the beginning of such proceedings.

2. When hearings are required by statute, a hearing shall be conducted before imposition of administrative disciplinary sanctions unless the suspected individual or entity waives the hearing in writing in accordance with subparagraphs D2c and d, of this section IV.

3. When hearings are not required by statute, a hearing may be requested in writing by the suspected individual or entity in accordance with subparagraphs D2e and f, of this section IV.

B. Content of Notice

Notice to initiate administrative disciplinary proceedings shall include the following:

1. A statement of allegations, and the basis thereof, sufficiently detailed to enable the suspected individual or entity to prepare an adequate defense.

2. Notification of the right to a hearing when a hearing is required by statute.

3. The procedure for waiving the right to appear at the hearing when a hearing is required by statute.

4. A copy of a written waiver that shall include a statement that the signer understands that the signer has the right to appear at a hearing and that administrative disciplinary sanctions may be imposed even if the signer does not appear at a hearing.

5. When a hearing is not required by statute, a statement to the effect that if the suspected individual or entity fails to request such a hearing in writing, the DLA may initiate administrative disciplinary action which may result in imposition of administrative disciplinary sanctions.

6. The procedure for requesting a hearing when a hearing is not required by statute.

7. Notice that the failure to appear at a scheduled hearing shall constitute a constructive waiver of the right to appear at the hearing.

8. The date, time, and place of a scheduled hearing; however, suspected individuals or entities shall be scheduled to appear for hearings in the Federal judicial district in which the individual or entity resides or in the Federal judicial district in which the alleged violation occurred.

9. A statement of hearing rights in accordance with subparagraph D of this section IV.

10. A copy of these Administrative Enforcement Provisions.

C. Hearing Examiners

1. Hearing examiners shall be attorneys with not less than 3 years experience in the practice of law subsequent to admission to the bar.

2. A hearing examiner shall be impartial. An individual who has participated in the decisions to initiate proceedings shall not serve as a hearing examiner in those proceedings.

3. In cases not subject to the APA, the General Counsel, DLA, shall appoint a hearing examiner.

4. In cases subject to the APA, Administrative Law Judges (ALJ) shall be used as hearing examiners. The General Counsel, DLA, shall forward a written request to the office of Administrative Law Judges, Office of Personnel Management. (See 5 U.S.C. 3344.) The request shall contain the following:

a. The requisite authority requiring an APA hearing for the particular statutory violation.

b. The status of the case.

c. The tentative hearing data.

d. The point of contact within the DLA.

e. An acknowledgment that the request is being made on a reimbursable, intermittent basis.

D. Hearings

1. The hearing examiner shall have the power to do the following:

a. Administer oaths and affirmations.

b. Issue subpoenas authorized by law.

c. Rule on offers of proof and recieve relevant evidence.

d. Take depositions or have depositions taken when justice shall be served.

e. Regulate the course of the hearing.

f. Hold conferences for the settlement or simplification of the issues by comment from the suspected individual or entity and the Government representative.

g. Dispose of procedural requests or similar matters.

h. Make decisions, in writing, on the merits of the particular case, as well as written recommendations of administrative disciplinary sanctions.

2. Suspected individuals and entities shall have hearing rights which include the following:

a. The right to self representation, or to be represented by counsel.

b. The right to introduce evidence and witnesses and the right to examine adverse witnesses.

c. The right to stipulate to facts.

d. The right to present oral argument.

e. The right to receive a transcript or recording of the proceedings upon request.

f. Additional rights that may be in the Administrative Procedure Act, if applicable.

3. Before the hearing examiner makes a decision, or the General Counsel, DLA, makes an appeal decision, the suspected individual or entity and the Government representative may submit the following material for consideration:

a. Proposed findings and conclusions.

b. Exceptions to the decisions of the hearing examiner, or to the tentative decisions of the GC, OSD.

c. Supporting reasons for the exceptions or proposed findings or conclusions.

4. The record shall reflect the ruling on each finding, conclusion, or exception. All decisions by the hearing examiner or the General Counsel, DLA, shall be a part of the record, along with the reasons and basis for such findings and decisions.

E. Appeals

1. Within 20 days following the date on the report and recommendations from the hearing examiner, the suspected individual or entity may file an appeal with the General Counsel, DLA. An appeal shall be in writing, and shall set forth all errors of act, law, or both, together with the reasons, alleged to exist in the report from the hearing examiner.

2. Extensions of time to file an appeal may be granted at the discretion of the General Counsel, DLA, upon receipt of written request for an extension from the individual or entity concerned.

3. The General Counsel, DLA shall make a written appeal decision if any appeal is submitted timely, after reviewing the report of findings of facts, the decision, and recommendations from the hearing examiner.

4. If the appeal decision is not in accordance with the report of findings of facts, the decision, or recommendations from the hearing examiner, the reasons shall be specified.

5. The decision of the General Counsel, DLA, shall be the final administrative determination. The appeal decision shall be mailed to the suspected individual or entity along with a statement, if applicable, that the individual or entity may seek judicial review of the administrative determinations.

F. Administrative Sanctions

1. The General Counsel, DLA, may take appropriate disciplinary action when indicated by the outcome of a case involving a violation of 18 U.S.C. 207 by:

a. Prohibiting the individual or entity from making on behalf of any other person except the United States, any formal or informal appearance before, or any oral or written communication with the intent to influence, to the Department of Defense, its officers or employees, on any matter of business for a period not to exceed 5 years. This may be enforced by directing DoD officers and employees to refuse to participate in any such appearance, or to accept any such communication.

b. Barring the individual or entity from employment by the Department of Defense for a period not to exceed 5 years.

2. The General Counsel, DLA, may take appropriate disciplinary action whenever indicated by the outcome of a case involving violations of 10 U.S.C. 2397, 2397a, or 2397c by:

a. Imposing and administrative penalty, not to exceed $10,000.

b. With respect to violations of 10 U.S.C. 2397a, imposing an additional administrative penalty of a particular amount if the individual is determined to have accepted or continued employment with a defense contractor during the 10-year period beginning with the date of separation from Government service.

3. The General Counsel, DLA, may take other appropriate disciplinary action when indicated by the outcome of a case in accordance with the laws or regulations violated.

G. Judicial Review

Any individual or entity found in violation as described, and against whom an administrative sanction is imposed, may seek judicial review of the final administrative determination.

CHAPTER XVI—SELECTIVE SERVICE SYSTEM

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CROSS REFERENCES: Regulation governing standards for discharge under the Selective Service Act of 1948: See part 41 of this title.

PARTS 1600–1601 [RESERVED]

PART 1602—DEFINITIONS

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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

accord with the provisions of part 1651 of this chapter.

[52 FR 24454, July 1, 1987]

§ 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

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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.

The district appeal board shall have jurisdiction to review and to affirm or change any local board decision appealed to it when:

(a) An appeal is submitted by a registrant from a local board in its area; or

(b) 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

(c) An appeal is submitted or transferred to it by the Director of Selective Service to assure the fair and equitable administration of the Law.

§ 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 civilian review boards, local boards, and 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]

§ 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.* and E.O. 11623.

SOURCE: 45 FR 48130, July 18, 1980, unless otherwise noted.

§1615.1 Registration.

(a) Registration under selective service law consists of:

(1) Completing of the Registration Card prescribed by the Director of Selective Service by a person required to register and

(2) The recording of the information furnished by the registrant on his Registration Card 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 Registration Card, he shall advise in writing the Selective Service System, 600 E Street, NW., Washington, DC 20435, of the applicable facts.

§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 Card 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; and

(b) To submit for inspection evidence of his identity at the time he submits his completed Registration Card to a person authorized to accept it. Evidence of identity may be a birth certificate, motor vehicle operator's license, student's identification card, United States Passport, or a similar document.

§ 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.
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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) *Civilian Review Board.* A board to review appeals by ASWs of job assignments.

(7) *Creditable Time.* Time that is counted toward an ASWs fulfillment of his alternative service obligation.

(8) *Director.* The Director of Selective Service, unless used with a modifier.

(9) *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.

(10) *Job Assignment.* A job with an eligible employer to which an ASW is assigned to perform his alternative service.

(11) *Job Bank.* A current inventory of alternative service job openings.

(12) *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.

(13) *Job Placement.* Assignment of the ASW to alternative service work.

(14) *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.

§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) Establish Civilian Review Boards and panels and provide for the selection and appointment of members thereof;

(11) Refer to the Department of Justice, when appropriate, any ASW who fails to perform satisfactorily his alternative service;

(12) Perform all other functions necessary for the administration of the Alternative Service Program; and

(13) 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.

§ 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 Civil Review 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).

§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 Civilian Review Board.

(e) The Director shall establish a Civilian Review Board for each ASO in whose area ASW's are working. The Civilian Review Board shall consist of not less than three members who will

serve without compensation. The Director may establish panels. No person will be appointed to a Civilian Review Board who would be ineligible for appointment to a District Appeal Board. A member of a Civilian Review Board would be disqualified in any case that a member of a District Appeal Board would be disqualified under the provisions of § 1605.25(a), (b) of this chapter. Each 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. In case of a tie vote on a question, the Board shall postpone action until the next meeting. If the question remains unresolved at the next meeting, the Director will transfer the case to another board. 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.

(f) It shall be the function of the Civilian Review 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.

(g) The Civilian Review Board may affirm the assignment or order the reassignment of the ASW in any matter considered by it.

(h) Procedures of the Civilian Review 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.

§ 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 (g) of this part. Creditable time for the corresponding period will be lost if neither the ASOM nor the Civilian Review Board orders the ASW's reassignment on the basis of § 1656.12(a)(1) of this part.

§ 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 Director, Selective Service System, ATTN: Records Manager, Washington, DC 20435. 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.

§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, Washington, DC 20435.

(4) A receipt of fees paid will be given upon request.

§ 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, Washington, DC 20435.

§ 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.
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1697.6 Written decision.
1697.7 Coordinating offset with another Federal agency.
1697.8 Procedures for salary offset.
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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.
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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: GCAO, Washington, DC 20435. 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.''

§ 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.

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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]

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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* 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 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.

§ 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

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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—REGULATIONS TO IMPLEMENT SECTION 401 OF THE INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1985

Sec.

1903.1 Applicability.
1903.2 Control of activities on protected property.
1903.3 Restrictions on admission to protected property.
1903.4 Control of vehicles on protected property.
1903.5 Enforcement of parking regulations.
1903.6 Security inspection.
1903.7 Prohibition on weapons and explosives.
1903.8 Prohibition on photographic, transmitting and recording equipment, and ''Walkman-type'' radios.
1903.9 Prohibition on narcotics and illegal substances.
1903.10 Prohibition on alcohol.
1903.11 Restrictions on the taking of photographs.
1903.12 Physical protection of facilities.
1903.13 Disturbances on protected property.
1903.14 Prohibition on gambling.
1903.15 Restriction regarding animals.
1903.16 Soliciting, vending, and debt collection.
1903.17 Distribution of unauthorized materials.
1903.18 Nondiscrimination.
1903.19 Penalties and the effect on other laws.

AUTHORITY: Sec. 401, Intelligence Authorization Act for Fiscal Year 1985 (50 U.S.C. 403*o*).

SOURCE: 50 FR 19154, May 6, 1985, unless otherwise noted.

§ 1903.1 Applicability.

These regulations apply to all property under the charge and control of the Security Protective Service of the Central Intelligence Agency and to all persons entering in or on such property (hereinafter referred to as *protected property*). Employees of the Central Intelligence Agency and any other persons entering upon protected property shall be subject to these regulations.

§ 1903.2 Control of activities on protected property.

Persons in and on protected property shall at all times comply with official signs of a prohibitory, regulatory, or directory nature and with the direction of Security Protective Officers and any other duly authorized personnel.

§ 1903.3 Restrictions on admission to protected property.

Access to protected property shall be restricted to ensure the orderly and secure conduct of Agency business. Admission to protected property will be restricted to employees and other persons with proper authorization who shall, when requested, display government or other identifying credentials to the Security Protective Officers or other duly authorized personnel when entering, leaving, or while on the property.

§ 1903.4 Control of vehicles on protected property.

Drivers of all vehicles entering or while on protected property shall comply with the signals and directions of Security Protective Officers or other duly authorized personnel and any posted traffic instructions. The blocking of entrances, driveways, walks, loading platforms, or fire hydrants on protected property is prohibited. Driving a non-emergency vehicle above the prescribed speed limit is prohibited. All vehicles shall be driven in a safe and careful manner at all times.

§ 1903.5 Enforcement of parking regulations.

For reasons of security, parking regulations shall be strictly enforced. Except with proper authorization, parking on protected property is not allowed without a permit. Parking without a permit or other authorization, parking in unauthorized locations or in locations reserved for other persons, or parking contrary to the direction of posted signs is prohibited. Vehicles parked in violation, where warning signs are posted, shall be subject to removal at the owner's risk, which shall be in addition to any penalties assessed pursuant to § 1903.19. The Agency assumes no responsibility for the payment of any fees or costs related to such removal which may be charged to the owner of the vehicle by the towing organization. This paragraph may be supplemented from time to time with the approval of the CIA Director of Security by the issuance and posting of such specific traffic directives as may be required, and when so issued and posted such directives shall have the same force and effect as if made a part hereof. Proof that a vehicle was parked in violation of these regulations or directives may be taken as *prima facie* evidence that the registered owner was responsible for the violation.

§ 1903.6 Security inspection.

Any personal property, including but not limited to any packages, briefcases, containers or vehicles brought into, while on, or being removed from protected property are subject to inspection. A search of a person may accompany an investigative stop or an arrest.

§ 1903.7 Prohibition on weapons and explosives.

No persons entering or while on protected property shall carry or possess, either openly or concealed, firearms, other dangerous or deadly weapons, explosives, or items intended to be used to fabricate an explosive or incendiary device, except as authorized by the CIA Director of Security or his designee at each Agency facility.

§ 1903.8 Prohibition on photographic, transmitting and recording equipment, and "Walkman-type" radios.

No persons entering or while on protected property shall bring or possess any photographic, transmitting, or recording equipment of any kind, or any ''Walkman-type'' radio, except as specifically authorized by the CIA Director of Security or his designee at each Agency facility.

§ 1903.9 Prohibition on narcotics and illegal substances.

Entering or while on protected property under the influence of, or using or possessing, any narcotic drug, hallucinogen, marijuana, barbiturate, or amphetamine is prohibited. Operation of a motor vehicle entering or while on protected property by a person under the influence of narcotic drugs, hallucinogens, marijuana, barbiturates or amphetamines is also prohibited. The above prohibitions shall not apply in cases where the drug is being used as prescribed for a patient by a licensed physician.

§ 1903.10 Prohibition on alcohol.

Entering or while on protected property under the influence of alcoholic beverages is prohibited. Operation of a motor vehicle entering or while on protected property by a person under the influence of alcoholic beverages is prohibited. The use of alcoholic beverages on protected property is also prohibited, except on occasions and on protected property for which the CIA Deputy Director for Administration or his designee has delegated in writing to the head of an office or division the authority to grant approval for such use, and approval has been granted. A copy of all such written delegations shall be provided to the CIA Director of Security.

§ 1903.11 Restrictions on the taking of photographs.

In order to protect the security of the Agency's facilities, photographs on protected property may be taken only with the consent of the CIA Director of Security. The taking of photographs includes the use of television cameras, video taping equipment, and motion picture cameras.

§ 1903.12 Physical protection of facilities.

The willful destruction of, or damage to any protected property, or any buildings or personal property thereon, is prohibited. The theft of any personal property, the creation of any hazard on protected property to persons or things, and the throwing of articles of any kind at buildings or persons on protected property are prohibited. The improper disposal of trash or rubbish on protected property is also prohibited.

§ 1903.13 Disturbances on protected property.

Any conduct which impedes or threatens the security of protected property, or any buildings thereon, or which disrupts performance of official duties by Agency employees, or which interferes with ingress to or egress from protected property is prohibited. Also prohibited is any disorderly conduct, any failure to obey an order to depart the premises, unwarranted loitering or other behavior which creates loud or unusual noise or nuisance, or any conduct which obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways or parking lots.

§ 1903.14 Prohibition on gambling.

Participating in games for money or other personal property, or the operating of gambling devices, the conduct of a lottery, or the selling or purchasing of numbers tickets, in or on protected property 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 conducted by an agency of a State as authorized by section 2(a)(5) of the Randolph-Sheppard Act, as amended (20 U.S.C. 107a(a)(5)).

§ 1903.15 Restriction regarding animals.

No animals except guide dogs for the blind or Agency guard or search dogs shall be brought upon protected property, except as authorized by the CIA Director of Security or his designee at each Agency facility.

§ 1903.16 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 protected property is prohibited. This does not apply to (a) national or local drives for funds for welfare, health, or other purposes as authorized by the ''Manual on Fund Raising Within the Federal Service,'' issued by the U.S. Office of Personnel Management under Executive Order 10927 of March 18, 1961, and sponsored or approved by the Central Intelligency Agency; and (b) concessions on personal notices posted by employees or authorized bulletin boards.

§ 1903.17 Distribution of unauthorized materials.

Distributing, posting or affixing materials, such as pamphlets, handbills, or flyers, on protected property is prohibited, except as provided by § 1903.16, as authorized by the CIA Director of Security or his designee at each Agency facility, or when conducted as part of authorized Government activities.

§ 1903.18 Nondiscrimination.

There shall be no unlawful discrimination by segregation or otherwise, because of race, creed, sex, color, or national origin against any person or persons admitted upon protected property in furnishing or by refusing to furnish to such person or persons the use of any services, privileges, accommodations, or activities provided on the protected property.

§ 1903.19 Penalties and the effect on other laws.

Whoever shall be found guilty of violating while on any protected property any provision of these regulations is subject to a fine of not more than $50 or imprisonment of not more than 30 days, or both. Nothing in these regulations shall be construed to abrogate or supersede any other Federal laws or any State and local laws or regulations applicable to any area in which the protected property 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.
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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

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1907.24 Designation of authority to hear challenges.
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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

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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

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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).

CHAPTER XX—INFORMATION SECURITY OVERSIGHT OFFICE, NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

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PART 2000—ADMINISTRATIVE PROCEDURES [RESERVED]

PART 2001—CLASSIFIED NATIONAL SECURITY INFORMATION

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APPENDIX A TO PART 2001—INTERAGENCY SECURITY CLASSIFICATION APPEALS PANEL BYLAWS.

AUTHORITY: Section 5.2 (a) and (b), and section 5.4., E.O. 12958, 60 FR 19825, April 20, 1995.

SOURCE: 60 FR 53492, Oct. 13, 1995, unless otherwise noted.

Subpart A—Classification

§ 2001.10 Classification definitions and standards [1.1 and 1.2].[1]

(a) *Definitions.* (1) An *original classification authority with jurisdiction over the information* includes:

(i) The official who authorized the original classification, if that official is still serving in the same position;

(ii) The originator's current successor in function;

(iii) A supervisory official of either; or

(iv) The senior agency official under Executive Order 12958 (''the Order'').

(2) *Permanently valuable information* or *permanent historical value* refers to information contained in:

(i) Records that have been accessioned into the National Archives of the United States;

(ii) Records that have been scheduled as permanent under a records retention schedule approved by the National Archives and Records Administration (NARA); and

(iii) Presidential historical materials, presidential records or donated historical materials located in the National Archives of the United States, a presidential library, or any other approved repository.

(b) *Identifying or describing damage to the national security.* Section 1.2(a) of the Order sets forth the conditions for classifying information in the first instance. One of these conditions, the ability to identify or describe the damage to the national security, is critical to the process of making an original classification decision. 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.

[1] Bracketed references pertain to related sections of Executive Order 12958.

§ 2001.11 Classification authority [1.4].

(a) *General.* Agencies with original classification authority shall establish a training program for original classifiers in accordance with subpart D of this part.

(b) *Requests for original classification authority.* Agencies not possessing such authority shall forward requests to the Director of the Information Security Oversight Office (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 Director of the Office of Management and Budget within 30 days. Agencies wishing to increase their assigned level of original classification authority shall forward requests in accordance with the procedures of this section.

§ 2001.12 Duration of classification [1.6].

(a) *Determining duration of classification for information originally classified under the Order*—(1) *Establishing duration of classification.* When determining the duration of classification for information originally classified under this Order, an original classification authority shall follow the sequence listed in paragraphs (a)(1)(i), (ii), and (iii) of this section.

(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) The original classification authority may assign an exemption designation to the information only if the information qualifies for exemption from automatic declassification as described in section 1.6(d) of the Order. Unless declassified earlier, such information contained in records determined by the Archivist of the United States 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 3.4 of the Order.

(2) *Extending duration of classification for information originally 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. If an original classification authority has assigned a date or event for declassification that is 10 years or less from the date of classification, an original classification authority with jurisdiction over the information may extend the classification duration of such information for additional periods not to exceed 10 years at a time.

(i) For information in records determined to have permanent historical value, successive extensions may not exceed a total of 25 years from the date of the information's origin. Continued classification of this information beyond 25 years is governed by section 3.4 of the Order.

(ii) For information in records not determined to have permanent historical value, successive extensions may exceed 25 years from the date of the information's origin.

(3) *Conditions for extending classification.* 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.

(b) *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. However, if the information is contained in records determined by the Archivist of the United States to be permanently valuable, and the prescribed date or event will take place more than 25 years from the information's origin, the declassification of the information will instead be subject to section 3.4 of the Order.

(2) *Indefinite duration of classification.* For information marked ''Originating Agency's Determination Required,'' its acronym ''OADR,'' or with some other marking indicating an indefinite duration of classification under a prior order:

(i) A declassification authority, as defined in section 3.1 of the Order, may declassify it;

(ii) An authorized original classification authority with jurisdiction over the information may re-mark the information to establish a duration of classification 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 by the Archivist of the United States 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 3.4 of the Order.

(c) *Foreign government information.* The declassifying agency is the agency that initially received or classified the information. When foreign government information is being considered for declassification or appears to be subject to automatic declassification, the declassifying agency shall determine whether the information is subject to a treaty or international agreement that would prevent its declassification at that time. Depending on the age of the information and whether it is contained in permanently valuable records, the declassifying agency shall also determine if another exemption under section 1.6(d) (other than section 1.6(d)(5)) or 3.4(b) of the Order, such as the exemptions that pertain 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, should consult with the foreign government prior to declassification.

(d) *Determining when information is subject to automatic declassification.* The ''date of the information's origin'' or ''the information's origin,'' as used in the Order and this part, pertains to the date that specific information, which is contemporaneously or subsequently classified, is first recorded in an agency's records, or in presidential historical materials, presidential records or donated historical materials. The following examples illustrate this process:

Example 1. An agency first issues a classification guide on the F–99 aircraft on October 20, 1995. The guide states that the fact that the F–99 aircraft has a maximum velocity of 500 m.p.h. shall be classified at the ''Secret'' level for a period of ten years. A document dated July 10, 1999, is classified because it includes the maximum velocity of the F–99. The document should be marked for declassification on October 20, 2005, ten years after the specific information was first recorded in the guide, not on July 10, 2009, ten years after the derivatively classified document was created.

Example 2. An agency classification guide issued on October 20, 1995, states that the maximum velocity of any fighter aircraft shall be classified at the ''Secret'' level for a period of ten years. The agency first records the specific maximum velocity of the new F–88 aircraft on July 10, 1999. The document should be marked for declassification on July 10, 2009, ten years after the specific information is first recorded, and not on October 20, 2005, ten years after the date of the guide's generic instruction.

§ 2001.13 Classification challenges [1.9].

(a) *Challenging classification.* Authorized holders wishing 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, including an individual external to the agency, who has been granted access to specific classified information in accordance with section 4.2(g) 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 for a decision. The challenger may also forward the challenge to the Interagency Security Classification Appeals 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 Interagency Security Classification Appeals 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 its implementing directives. 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.

§ 2001.14 Classification guides [2.3].

(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 or personal identifier, and position;

(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) Prescribe declassification instructions or the exemption category from automatic declassification for each element of information;

(9) Specify, when citing the exemption category listed in section 1.6(d)(8) of the Order, the applicable statute, treaty or international agreement; and

(10) State a concise reason for classification which, at a minimum, cites the applicable classification category or categories in section 1.5 of the Order.

(c) *Dissemination of classification guides.* Classification guides shall be disseminated as widely as necessary to ensure the proper and uniform derivative classification of information.

(d) *Reviewing and updating classification guides.* (1) Classification guides, including guides created under prior orders, shall be reviewed and updated as circumstances require, but, in any event, at least once every five years. Updated instructions for guides first created under prior orders shall comply with the requirements of the Order and this part.

(2) Originators of classification guides are encouraged to consult the users of guides for input 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.

Subpart B—Identification and Markings

§ 2001.20 General [1.7].

A uniform security classification system requires that standard markings be applied to classified information. Except in extraordinary circumstances, or as approved by the Director of ISOO, the marking of classified information created after October 14, 1995, 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 [1.7(a)].

(a) *Primary markings.* On the face of each originally classified document, including electronic media, the classifier shall apply the following markings.

(1) *Classification authority.* The name or personal identifier, and position title of the original classifier shall appear on the ''Classified By'' line. An example might appear as:

Classified By: David Smith, Chief, Division 5
or
Classified By: ID# IMNO1, Chief, Division 5

(2) *Agency and office of origin.* If not otherwise evident, the agency and office of origin shall be identified and placed below 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 classifier shall identify the reason(s) for the decision to classify. The classifier shall include, at a minimum, a brief reference to the pertinent classification category(ies), or the number 1.5 plus the letter(s) that corresponds to that classification category in section 1.5 of the Order.

(i) These categories, as they appear in the Order, are as follows:

(a) military plans, weapons, or operations;

(b) foreign government information;

(c) intelligence activities (including special activities), 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; or

(g) vulnerabilities or capabilities of systems, installations, projects or plans relating to the national security.

(ii) An example might appear as:

Classified By: David Smith, Chief, Division 5,
Department of Good Works, Office of Administration
Reason: Vulnerabilities or capabilities of plans relating to the national security or
Reason: 1.5(g)

(iii) When the reason for classification is not apparent from the content of the information, e.g., classification by compilation, the classifier shall provide a more detailed explanation of the reason for classification.

(4) *Declassification instructions.* The duration of the original classification

decision shall be placed on the ''Declassify On'' line. The classifier will apply one of the following instructions.

(i) The classifier will apply a date or event for declassification that corresponds to the lapse of the information's national security sensitivity, which may not exceed 10 years from the date of the original decision. When linking the duration of classification to a specific date or event, mark that date or event as:

Classified By: David Smith, Chief, Division 5, Department of Good Works, Office of Administration
Reason: 1.5(g)
Declassify On: October 14, 2004 or
Declassify On: Completion of Operation

(ii) When a specific date or event within 10 years cannot be established, the classifier will apply the date that is 10 years from the date of the original decision. For example, on a document that contains information classified on October 14, 1995, mark the ''Declassify On'' line as:

Classified By: David Smith, Chief, Division 5, Department of Good Works, Office of Administration
Reason: 1.5(g)
Declassify On: October 14, 2005

(iii) Upon the determination that the information must remain classified beyond 10 years, the classifier will apply the letter ''X'' plus a brief recitation of the exemption category(ies), or the letter ''X'' plus the number that corresponds to that exemption category(ies) in section 1.6(d) of the Order.

(A) Exemption categories in E.O. 12958.

X1: reveal an intelligence source, method, or activity, or a cryptologic system or activity;

X2: reveal information that would assist in the development or use of weapons of mass destruction;

X3: reveal information that would impair the development or use of technology within a United States weapons system;

X4: reveal United States military plans, or national security emergency preparedness plans;

X5: reveal foreign government information;

X6: damage relations between the United States and a foreign government, reveal a confidential source, or seriously undermine diplomatic activities that are reasonably expected to be ongoing for a period greater than that provided in paragraph (b) above, [section 1.6(b) of the Order];

X7: impair the ability of responsible United States Government officials to protect the President, the Vice President, and other individuals for whom protection services, in the interest of national security, are authorized; or

X8: violate a statute, treaty, or international agreement.

(B) Example. A document containing information exempted from automatic declassification may appear as:

Classified By: David Smith, Chief, Division 5, Department of Good Works, Office of Administration
Reason: 1.5(g)
Declassify On: X-U.S. military plans or
Declassify On: X4

(b) *Overall marking.* The highest level of classified information contained in a document 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 and the like, shall be marked to indicate its classification level by placing a parenthetical symbol immediately preceding or following the portion to which it applies.

(1) To indicate the appropriate classification level, the symbols ''(TS)'' for Top Secret, ''(S)'' for Secret, ''(C)'' for Confidential, and ''(U)'' for Unclassified shall be used.

(2) Unless the original classification authority indicates otherwise on the document, each classified portion of a document exempted from automatic declassification shall be presumed to be exempted from automatic declassification also.

(3) 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. Statements citing administrative burden alone will ordinarily not be viewed as sufficient grounds to support a waiver.

(d) *Classification extensions.* (1) An original classification authority may extend the duration of classification for successive periods not to exceed 10 years at a time. For information contained in records determined to be permanently valuable, multiple extensions shall not exceed 25 years from the date of the information's origin.

(2) The ''Declassify On'' line shall be revised to include the new declassification instructions, and shall include the identity of the person authorizing the extension and the date of the action.

(3) The office of origin shall make reasonable attempts to notify all holders of such information. Classification guides shall be updated to reflect such revisions.

(4) An example of an extended duration of classification may appear as:

Classified By: David Smith, Chief, Division 5, Department of Good Works, Office of Administration
Reason: 1.5(g)
Declassify On: Classification extended on December 1, 2000, until December 1, 2010, by David Jones, Chief, Division 5

(e) *Marking information exempted from automatic declassification at 25 years.* (1) When an agency head or senior agency official exempts permanently valuable information from automatic declassification at 25 years, the ''Declassify On'' line shall be revised to include the symbol ''25X'' plus a brief reference to the pertinent exemption category(ies) or the number(s) that corresponds to that category(ies) in section 3.4(b) of the Order. Other than when the exemption pertains to the identity of a confidential human source, or a human intelligence source, the revised ''Declassify On'' line shall also include the new date or event for declassification.

(2) The pertinent exemptions, using the language of section 3.4(b) of the Order, are:

25X1: reveal the identity of a confidential human source, or reveal information about the application of an intelligence source or method, or reveal the identity of a human intelligence source when the unauthorized disclosure of that source would clearly and demonstrably damage the national security interests of the United States;

25X2: reveal information that would assist in the development 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 actual U.S. military war plans that remain in effect;

25X6: reveal information that would seriously and demonstrably impair relations between the United States and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities of the United States;

25X7: reveal information that would clearly and demonstrably impair the current ability of United States Government officials to protect the President, Vice President, and other officials for whom protection services, in the interest of national security, are authorized;

25X8: reveal information that would seriously and demonstrably impair current national security emergency preparedness plans; or

25X9: violate a statute, treaty, or international agreement.

(3) The pertinent portion of the marking would appear as:

Declassify On: 25X-State-of-the-art technology within U.S. weapon system, October 1, 2010 or
Declassify On: 25X4, October 1, 2010

(4) Documents should not be marked with a ''25X'' marking until the agency has been informed that the President or the Interagency Security Classification Appeals 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 3.4(c) of the Order until the individual document is removed from the file.

§ 2001.22 Derivative classification [2.2].

(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) *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, 1995, Ofc. of Admin., Department of Good Works or
Derived From: CG No. 1, Department of Good Works, dated October 20, 1995

(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 maintain the identification of each source with the file or record copy of the derivatively classified document. When practicable, this list should be included in or with all copies of the 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, 1995, Department of Good Works, Office of Administration

(c) *Reason for classification.* The reason for the original classification decision, as reflected in the source document(s) or classification guide, is not required to be transferred in a derivative classification action. If included, however, it shall conform to the standards in § 2001.21(a)(3).

(d) *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 guide.

(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.

(i) When a document is classified derivatively from a source document(s) or classification guide that contains the declassification instruction, ''Originating Agency's Determination Required,'' or ''OADR,'' unless otherwise instructed by the original classifier, the derivative classifier shall carry forward:

(A) The fact that the source document(s) was marked with this instruction; and

(B) The date of origin of the most recent source document(s), classification guide, or specific information, as appropriate to the circumstances.

(ii) An example might appear as:

Declassify On: Source marked ''OADR'', Date of source: October 20, 1990

(iii) This marking will permit the determination of when the classified information is 25 years old and, if permanently valuable, subject to automatic declassification under section 3.4 of the Order.

(e) *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).

(f) *Portion marking.* Each portion of a derivatively classified document shall be marked in accordance with its source, and as provided in § 2001.21(c).

§ 2001.23 Additional requirements [1.7].

(a) *Marking prohibitions.* Markings other than ''Top Secret,'' ''Secret,'' and ''Confidential,'' such as ''For Official Use Only,'' or ''Limited Official

Use,'' shall not be used to identify classified national security information. No other term or phrase shall be used in conjunction with these markings, such as ''Secret Sensitive'' or ''Agency Confidential,'' to identify classified national security information. The terms ''Top Secret,'' ''Secret,'' and ''Confidential'' should not be used to identify non-classified executive branch information.

(b) *Agency prescribed special markings.* Agencies shall refrain from the use of special markings when they merely restate or emphasize the principles and standards of the Order and this part. Upon request, the senior agency official shall provide the Director of ISOO with a written explanation for the use of agency special markings.

(c) *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)

(d) *Foreign government information.* Documents that contain foreign government information shall include the marking, ''This Document Contains (indicate country of origin) Information.'' The portions of the document that contain the foreign government information shall be marked to indicate the government and classification level, e.g., ''(UK–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. When classified records are transferred to the National Archives and Records Administration for storage or archival purposes, the accompanying documentation shall, at a minimum, identify the boxes that contain foreign government information. 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.

(e) *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 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.

(f) *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 and in any applicable classification guide.

(g) *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 and has been 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.

§ 2001.24 Declassification markings [Reserved].

Subpart C—Self-Inspections

§ 2001.30 General [5.6].

(a) *Purpose.* This subpart sets standards for establishing and maintaining an ongoing agency self-inspection program, which shall include the periodic review and assessment of the agency's classified product. ''Self-inspection'' means the internal review and evaluation of individual agency activities and the agency as a whole with respect to the implementation of the program established under the Order.

(b) *Applicability*. These standards are binding on all executive branch agencies that create or handle classified information. Pursuant to Executive Order 12829, the National Industrial Security Program Operating Manual (NISPOM) prescribes the security requirements, restrictions and safeguards applicable to industry, including the conduct of contractor self-inspections. The standards established in the NISPOM should be consistent with the standards prescribed in Executive Order 12958 and this part.

(c) *Responsibility*. The senior agency official is responsible for the agency's self-inspection program. The senior agency official shall designate agency personnel to assist in carrying out this responsibility.

(d) *Approach*. The official(s) responsible for the program shall determine the means and methods for the conduct of self-inspections. These may include:

(1) A review of relevant security directives, guides and instructions;

(2) Interviews with producers and users of classified information;

(3) A review of access and control records and procedures; and

(4) A review of a sample of classified documents generated by agency activities.

(e) *Frequency*. The official(s) responsible for the program shall set the frequency of self-inspections on the basis of program needs and the degree of classification activity. Activities that originate significant amounts of classified information should conduct at least one document review per year.

(f) *Reporting.* The format for documenting findings shall be set by the official(s) responsible for the program.

§ 2001.31 Coverage [5.6(c)(4)].

(a) *General.* These standards are not all-inclusive. Each agency may expand upon the coverage according to program and policy needs. Each self-inspection of an agency activity need not include all the elements covered in this section. Agencies without original classification authority need not include in their self-inspections those elements of coverage pertaining to original classification.

(b) *Elements of coverage*—(1) *Original classification*. (i) Evaluate original classifiers' general understanding of the process of original classification, including the:

(A) Applicable standards for classification;

(B) Levels of classification and the damage criteria associated with each; and

(C) Required classification markings.

(ii) Determine if delegations of original classification authority conform with the requirements of the Order, including whether:

(A) Delegations are limited to the minimum required to administer the program;

(B) Designated original classifiers have a demonstrable and continuing need to exercise this authority;

(C) Delegations are in writing and identify the official by name or position title; and

(D) New requests for delegation of classification authority are justified.

(iii) Assess original classifiers' familiarity with the duration of classification requirements, including:

(A) Assigning a specific date or event for declassification when possible;

(B) Establishing ordinarily a maximum 10-year duration of classification when an earlier date or event cannot be determined;

(C) Limiting extensions of classification for specific information for successive periods not to exceed 10 years at a time; and

(D) Exempting from declassification within 10 years specific information as provided in section 1.6 of the Order.

(iv) Conduct a review of a sample of classified information generated by the inspected activity to determine the propriety of classification and the application of proper and full markings.

(v) Evaluate classifiers' actions to comply with the standards specified in § 2001.14 and § 2001.53 of this part, relating to classification and declassification guides, respectively.

(vi) Verify observance with the prohibitions on classification and limitations on reclassification.

(vii) Assess whether the agency's classification challenges program meets the requirements of the Order and this part.

(2) *Derivative classification.* Assess the general familiarity of individuals who classify derivatively with the:

(i) Conditions for derivative classification;

(ii) Requirement to consult with the originator of the information when questions concerning classification arise;

(iii) Proper use of classification guides; and

(iv) Proper and complete application of classification markings to derivatively classified documents.

(3) *Declassification.* (i) Verify whether the agency has established, to the extent practical, a system of records management to facilitate public release of declassified documents.

(ii) Evaluate the status of the agency declassification program, including the requirement to:

(A) Comply with the automatic declassification provisions regarding historically valuable records over 25 years old;

(B) Declassify, when possible, historically valuable records prior to accession into the National Archives;

(C) Provide the Archivist with adequate and current declassification guides;

(D) Ascertain that the agency's mandatory review program conforms to established requirements; and

(E) Determine whether responsible agency officials are cooperating with the Archivist in the development and maintenance of a Government-wide database of information that has been declassified.

(4) *Safeguarding.* (i) Monitor agency adherence to established safeguarding standards.

(ii) Assess compliance with controls for access to classified information.

(iii) Evaluate the effectiveness of the agency's program in detecting and processing security violations and preventing recurrences.

(iv) Assess compliance with the procedures for identifying, reporting and processing unauthorized disclosures of classified information.

(v) Evaluate the effectiveness of procedures to ensure that:

(A) The originating agency exercises control over the classified information it generates;

(B) Holders of classified information do not disclose information originated by another agency without that agency's authorization; and

(C) Departing or transferred officials return all classified information in their possession to authorized agency personnel.

(5) *Security education and training.* Evaluate the effectiveness of the agency's security education and training program in familiarizing appropriate personnel with classification procedures; and determine whether the program meets the standards specified in subpart D of this part.

(6) *Management and oversight.* (i) Determine whether original classifiers have received prescribed training.

(ii) Verify whether the agency's special access programs:

(A) Adhere to specified criteria in the creation of these programs;

(B) Are kept to a minimum;

(C) Provide for the conduct of internal oversight; and

(D) Include an annual review of each program to determine whether it continues to meet the requirements of the Order.

(iii) Assess whether:

(A) Senior management demonstrates commitment to the success of the program, including providing the necessary resources for effective implementation;

(B) Producers and users of classified information receive guidance with respect to security responsibilities and requirements;

(C) Controls to prevent unauthorized access to classified information are effective;

(D) Contingency plans are in place for safeguarding classified information used in or near hostile areas;

(E) The performance contract or other system used to rate civilian or military personnel includes the management of classified information as a critical element or item to be evaluated in the rating of: Original classifiers; security managers; classification management officers; and security specialists; and other employees significantly involved with classified information; and

(F) A method is in place for collecting information on the costs associated with the implementation of the Order.

Subpart D—Security Education and Training

§ 2001.40 General [5.6].

(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 about classification, safeguarding, and declassification policies and procedures;

(2) Increase uniformity in the conduct of agency security education and training programs; and

(3) Reduce improper classification, safeguarding and declassification practices.

(b) *Applicability*. These standards are binding on all executive branch departments and agencies that create or handle classified information. Pursuant to Executive Order 12829, the NISPOM prescribes the security requirements, restrictions, and safeguards applicable to industry, including the conduct of contractor security education and training. The standards established in the NISPOM should be consistent with the standards prescribed in Executive Order 12958 and of this part.

(c) *Responsibility*. The senior agency official is responsible for the agency's security education and training program. The senior agency official shall designate agency personnel to assist in carrying out this responsibility.

(d) *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, and other media and methods. Agencies shall maintain records about the programs it has offered and employee participation in them.

(e) *Frequency*. The frequency of agency security education and training will vary in accordance with the needs of the agency's security classification program. Each agency shall provide some form of refresher security education and training at least annually.

§ 2001.41 Coverage [5.6(c)(3)].

(a) *General.* Each department or agency shall establish and maintain a formal security education and training program which provides for initial and refresher training, and termination briefings. This subpart establishes security education and training standards for original 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. These standards are not intended to be all-inclusive. The official responsible for the security education and training program may expand or modify the coverage provided in this part according to the agency's program and policy needs.

(b) *Elements of initial coverage.* All cleared agency personnel shall receive initial training on basic security policies, principles and practices. Such training must be provided in conjunction with the granting of a security clearance, and prior to granting access to classified information. The following areas should be considered for inclusion in initial briefings.

(1) *Roles and responsibilities.* (i) What are the responsibilities of the senior

agency official, classification management officers, the security manager and the security specialist?

(ii) What are the responsibilities of agency employees who create or handle classified information?

(iii) Who should be contacted in case of questions or concerns about classification matters?

(2) *Elements of classifying and declassifying information.* (i) What is classified information and why is it important to protect it?

(ii) What are the levels of classified information and the damage criteria associated with each level?

(iii) What are the prescribed classification markings and why is it important to have classified information fully and properly marked?

(iv) What are the general requirements for declassifying information?

(v) What are the procedures for challenging the classification status of information?

(3) *Elements of safeguarding.* (i) What are the proper procedures for safeguarding classified information?

(ii) What constitutes an unauthorized disclosure and what are the penalties associated with these disclosures?

(iii) What are the general conditions and restrictions for access to classified information?

(iv) What should an individual do when he or she believes safeguarding standards may have been violated?

(c) *Specialized security education and training.* Original classifiers, authorized declassification authorities, individuals specifically designated as responsible for derivative classification, classification management officers, security managers, security specialists, and all other personnel whose duties significantly involve the creation or handling of classified information should receive more detailed training. This training should be provided before or concurrent with the date the employee assumes any of the positions listed above, but in any event no later than six months from that date. Coverage considerations should include:

(1) *Original classifiers.* (i) What is the difference between original and derivative classification?

(ii) Who can classify information originally?

(iii) What are the standards that a designated classifier must meet to classify information?

(iv) What is the process for determining duration of classification?

(v) What are the prohibitions and limitations on classifying information?

(vi) What are the basic markings that must appear on classified information?

(vii) What are the general standards and procedures for declassification?

(2) *Declassification authorities other than original classifiers.* (i) What are the standards, methods and procedures for declassifying information under Executive Order 12958?

(ii) What are the standards for creating and using agency declassification guides?

(iii) What is contained in the agency's automatic declassification plan?

(iv) What are the agency responsibilities for the establishment and maintenance of a declassification database?

(3) *Individuals specifically designated as responsible for derivative classification, security managers, classification management officers, security specialists or any other personnel whose duties significantly involve the management and oversight of classified information.* (i) What are the original and derivative classification processes and the standards applicable to each?

(ii) What are the proper and complete classification markings, as described in subpart B of this part?

(iii) What are the authorities, methods and processes for downgrading and declassifying information?

(iv) What are the methods for the proper use, storage, reproduction, transmission, dissemination and destruction of classified information?

(v) What are the requirements for creating and updating classification and declassification guides?

(vi) What are the requirements for controlling access to classified information?

(vii) What are the procedures for investigating and reporting instances of security violations, and the penalties associated with such violations?

(viii) What are the requirements for creating, maintaining, and terminating special access programs, and the mechanisms for monitoring such programs?

(ix) What are the procedures for the secure use, certification and accreditation of automated information systems and networks which use, process, store, reproduce, or transmit classified information?

(x) What are the requirements for oversight of the security classification program, including agency self-inspections?

(d) *Refresher security education and training.* Agencies shall provide refresher training to employees who create, process or handle classified information. Refresher training should reinforce the policies, principles and procedures covered in initial and specialized training. Refresher training should also address 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. Refresher training should also address issues or concerns identified during agency self-inspections. When other methods are impractical, agencies may satisfy the requirement for refresher training by means of audiovisual products or written materials.

(e) *Termination briefings.* Each agency shall ensure that each employee granted access to classified information who leaves the service of the agency receives a termination briefing. Also, each agency employee whose clearance is withdrawn 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.

(f) *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 E—Declassification

§ 2001.50 Definition [3.1].

A *file series* is a body of related records created or maintained by an agency, activity, office or individual. The records may be related by subject, topic, form, function, or filing scheme. An agency, activity, office, or individual may create or maintain several different file series, each serving a different function. Examples may include a subject file, alphabetical name index, chronological file, or a record set of agency publications. File series frequently correspond to items on a NARA-approved agency records schedule. Some very large series may contain several identifiable sub-series, and it may be appropriate to treat sub-series as discrete series for the purposes of the Order.

§ 2001.51 Automatic declassification [3.4].

(a) *General.* All departments and agencies that have original classification authority, or previously had original classification authority, and maintain records appraised as having permanent historical value that contain information classified by that agency shall comply with the automatic declassification provisions of the Order. All agencies with original classification authority shall cooperate with NARA in carrying out an automatic declassification program involving accessioned Federal records, presidential papers and records, and donated historical materials under the control of the Archivist of the United States. The Archivist will not declassify information created by another agency without the prior consent of that agency.

(b) *Presidential records.* The Archivist of the United States shall establish procedures for the declassification of

presidential or White House materials accessioned into the National Archives of the United States or maintained in the presidential libraries.

(c) *Transferred information.* In the case of classified information transferred in conjunction with a transfer of functions, and not merely for storage or archival purposes, the receiving agency shall be deemed to be the originating agency.

(d) *Unofficially transferred information.* In the case of classified information that is not officially transferred as described in paragraph (c), of this section, but that originated in an agency that has ceased to exist and for which there is no successor agency, the Director of ISOO will designate an agency or agencies to act on provisions of the Order.

(e) *Processing records originated by another agency.* When an agency uncovers classified records originated by another agency that appear to meet the criteria for the application of the automatic declassification provisions of the Order, the finding agency should alert the originating agency and seek instruction regarding the handling and disposition of pertinent records.

(f) *Unscheduled records.* Classified information in records that have not been scheduled for disposal or retention by NARA is not subject to section 3.4 of the Order. Classified information in records that are scheduled as permanently valuable when that information is already more than 20 years old shall be subject to the automatic declassification provisions of section 3.4 of the Order five years from the date the records are scheduled. Classified information in records that are scheduled as permanently valuable when that information is less than 20 years old shall be subject to the automatic declassification provisions of section 3.4 of the Order when the information is 25 years old.

(g) *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 would prevent its declassification at that time. The declassifying agency shall also determine if another exemption under section 3.4(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, should consult with the foreign government prior to declassification.

(h) *Assistance to the Archivist of the United States.* Agencies shall consult with NARA before establishing automatic declassification programs. Agencies shall cooperate with NARA in developing schedules for the declassification of records in the National Archives of the United States and the presidential libraries to ensure that declassification is accomplished in a timely manner. NARA will provide information about the records proposed for automatic declassification. Agencies shall consult with NARA 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 information about agency declassification actions when records are transferred to NARA. NARA will provide guidance to the agencies about the requirements for notification of declassification actions on transferred records, box labeling, and identifying exempt information in the records.

(i) *Use of approved declassification guides.* Approved declassification guides may be used as a tool to assist in the exemption from automatic declassification of specific information as provided in section 3.4(d) of the Order. These guides must include additional pertinent detail relating to the exemptions described in section 3.4(b) of the Order, and follow the format required of declassification guides for systematic review as described in § 2001.53 of this part. In order for such guides to be used in place of the identification of specific information within individual documents, the information to be exempted must be narrowly defined, with

sufficient specificity to allow the user to identify the information with precision. Exemptions for general categories of information will not be acceptable. The actual items to be exempted are specific documents. All such declassification guides used in conjunction with section 3.4(d) of the Order must be submitted to the Director of ISOO, serving as Executive Secretary of the Interagency Security Classification Appeals Panel, for approval by the Panel.

(j) *Automatic declassification date.* No later than April 17, 2000, information over 25 years old in unreviewed permanently valuable records in non-exempt file series will be automatically declassified.

(k) *Redaction standard.* Agencies are encouraged but are not required to redact documents that contain information that is exempt from automatic declassification under section 3.4 of the Order, especially if the information that must remain classified comprises a relatively small portion of the document.

(l) *Restricted Data and Formerly Restricted Data.* (1) Restricted Data (RD) and Formerly Restricted Data (FRD) are exempt from the automatic declassification requirements in section 3.4 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 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 shall remain classified indefinitely or shall be referred to the Department of Energy or the Department of Defense for a classification review.

§ 2001.52 Systematic declassification review [3.5].

(a) *Listing of declassification authorities.* Agencies shall maintain a current listing of officials delegated declassification authority by name, position, or other identifier. If possible, this listing shall be unclassified.

(b) *Responsibilities.* Agencies shall establish systematic review programs for those records containing information that is exempt from automatic declassification. Agencies may also conduct systematic review of information contained in permanently valuable records that is less than 25 years old.

§ 2001.53 Declassification guides [3.5(b)].

(a) *Preparation of declassification guides.* Declassification guides shall be prepared to facilitate the declassification of information contained in records determined to be of permanent historical value. When it is sufficiently detailed and understandable, and identified for both purposes, a classification guide may also be used as a declassification guide.

(b) *General content of declassification guides.* Declassification guides shall, at a minimum:

(1) Identify the subject matter of the declassification guide;

(2) Identify the original declassification authority by name or personal identifier, and position;

(3) Provide the date of issuance or last review;

(4) State precisely the categories or elements of information:

(i) To be declassified;

(ii) To be downgraded; or

(iii) Not to be declassified.

(5) Identify any related files series that have been exempted from automatic declassification pursuant to section 3.4(c) of the Order;

(6) To the extent a guide is used in conjunction with the automatic declassification provisions in section 3.4 of the Order, state precisely the elements of information to be exempted from declassification to include:

(i) The appropriate exemption category listed in section 3.4(b) of the Order, and, when citing the exemption category listed in section 3.4(b)(9) of

the Order, specify the applicable statute, treaty or international agreement; and

(ii) A date or event for declassification.

(c) *External review.* Agencies shall submit declassification guides for review to the Director of ISOO. To the extent such guides are used in conjunction with the automatic declassification provisions in section 3.4 of the Order, the Director shall submit them for approval by the Interagency Security Classification Appeals Panel.

(d) *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.

§ 2001.54 Mandatory review for declassification [3.6, 3.7].

(a) *U.S. originated information*—(1) *Receipt of requests.* Each agency shall publish in the FEDERAL REGISTER the identity of the person(s) or office(s) to which mandatory declassification review requests should be addressed.

(2) *Processing.* (i) Requests for classified records in the custody of the originating agency. A valid mandatory declassification review request need not identify the requested information by date or title of the responsive records, but must be of sufficient specificity to allow agency personnel to locate the records containing the information sought with a reasonable amount of effort. In responding to mandatory declassification review requests, agencies shall either make a prompt declassification determination and notify the requester accordingly, or inform the requester of the additional time needed to process the request. Agencies shall ordinarily make a final determination within 180 days from the date of receipt. When information cannot be declassified in its entirety, agencies will make reasonable efforts to release, consistent with other applicable law, those declassified portions of the requested information that constitute a coherent segment. Upon denial of an initial request, the agency shall also notify the requester of the right of an administrative appeal, which must be filed within 60 days of receipt of the denial.

(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 process the request in accordance with this section. The originating agency shall communicate its declassification determination to the referring 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 requester in writing of the final determination and of the reasons for any denial.

(iv) Appeals to the Interagency Security Classification Appeals Panel. In accordance with section 5.4 of the Order, the Interagency Security Classification Appeals Panel shall publish in the FEDERAL REGISTER no later than February 12, 1996, the rules and procedures for bringing mandatory declassification appeals before it.

(b) *Foreign government information.* Except as provided in this paragraph, agency heads 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 would prevent its declassification at that time. The declassifying agency shall also determine if another exemption under section 1.6(d) of the Order (other than section 1.6(b)(5)), 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, should consult with the foreign government prior to declassification.

(c) *Cryptologic and intelligence information.* Mandatory declassification review requests for cryptologic information and information concerning intelligence activities (including special activities) or intelligence sources or methods shall be processed solely in accordance with special procedures issued by the Secretary of Defense and the Director of Central Intelligence, respectively.

(d) *Fees.* In responding to mandatory declassification review requests for classified records, agency heads may charge fees in accordance with section 9701 of title 31, United States Code. The schedules of fees published in the FEDERAL REGISTER by agencies in implementation of Executive Order 12356 shall remain in effect until revised.

(e) *Assistance to the Department of State.* Heads of agencies should 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.

(f) *Requests filed under mandatory declassification review and the Freedom of Information Act.* When a requester submits a request both under mandatory review and the Freedom of Information Act (FOIA), the agency shall require the requester to elect one process or the other. If the requester fails to elect one or the other, the request will be treated as a FOIA request unless the requested materials are subject only to mandatory 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, 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.

Subpart F—Reporting

§ 2001.60 Statistical reporting [5.3].

Each agency that creates or handles classified information shall report annually to the Director of ISOO statistics related to its security classification program. The Director shall solicit recommendations from the member agencies of the Security Policy Forum regarding the reporting requirements. The Director will instruct agencies what data elements are required, and how and when they are to be reported.

§ 2001.61 Accounting for costs [5.6(c)(8)].

(a) Information on the costs associated with the implementation of the Order will be collected from the agencies by the Office of Management and Budget (OMB). OMB will provide data to ISOO on the cost estimates for classification-related activities. ISOO will include these cost estimates in its annual report to the President. The agency senior official should work closely with the agency comptroller to ensure that the best estimates are collected.

(b) The Secretary of Defense, acting as the executive agent for the National Industrial Security Program under Executive Order 12829, and consistent with agreements entered into under section 202 of E.O. 12829, will collect cost estimates for classification-related activities of contractors, licensees, certificate holders, and grantees, and report them to ISOO annually. ISOO will include these cost estimates in its annual report to the President.

§ 2001.62 Effective date [6.2].

Part 2001 shall become effective October 14, 1995.

APPENDIX A TO PART 2001—INTERAGENCY SECURITY CLASSIFICATION APPEALS PANEL BYLAWS

ARTICLE I. PURPOSE

The purpose of the Interagency Security Classification Appeals Panel (ISCAP) and these bylaws is to fulfill the functions assigned to the ISCAP by Executive Order 12958, ''Classified National Security Information.''

ARTICLE II. AUTHORITY

Executive Order 12958, ''Classified National Security Information'' (hereafter the ''Order''), and its implementing directives.

ARTICLE III. MEMBERSHIP

A. Primary Membership. Appointments under section 5.4(a) of the Order establish the primary membership of the ISCAP.

B. Alternate Membership.

1. Primary members are expected to participate fully in the activities of the ISCAP. The Executive Secretary shall request that each agency or office head represented on the ISCAP also designate in writing addressed to the Chair an alternate to represent his or her agency or office on all occasions when the primary member is unable to participate. When serving for a primary member, an alternate member shall assume all the rights and responsibilities of that primary member, including voting.

2. When a vacancy in the primary membership occurs, the designated alternate shall represent the agency or office until the agency or office head fills the vacancy. The Chair, working through the Executive Secretary, shall take all appropriate measures to encourage the agency or office head to fill a vacancy in the primary membership as quickly as possible.

C. Chair. As provided in section 5.4(a) of the Order, the President shall select the Chair from among the primary members.

D. Vice Chair. The members may elect from among the primary members a Vice Chair who shall:

1. Chair meetings that the Chair is unable to attend; and

2. Serve as Acting Chair during a vacancy in the Chair of the ISCAP.

ARTICLE IV. MEETINGS

A. Purpose. The primary purpose of ISCAP meetings is to discuss and bring formal resolution to matters before the ISCAP.

B. Frequency. As provided in section 5.4(a) of the Order, the ISCAP shall meet at the call of the Chair, who shall schedule meetings as may be necessary for the ISCAP to fulfill its functions in a timely manner. The Chair shall also convene the ISCAP when requested by a majority of its primary members.

C. Quorum. Meetings of the ISCAP may be held only when a quorum is present. For this purpose, a quorum requires the presence of at least five primary or alternate members.

D. Attendance. As determined by the Chair, attendance at meetings of the ISCAP shall be limited to those persons necessary for the ISCAP to fulfill its functions in a complete and timely manner.

E. Agenda. The Chair shall establish the agenda for all meetings. Potential items for the agenda may be submitted to the Chair by any member or the Executive Secretary. Acting through the Executive Secretary, the Chair will distribute the agenda and supporting materials to the members as soon as possible before a scheduled meeting.

F. Minutes. The Executive Secretary shall be responsible for the preparation of each meeting's minutes, and the distribution of draft minutes to each member. The minutes will include a record of the members present at the meeting and the result of each vote. At the subsequent meeting of the ISCAP, the Chair will read or reference the draft minutes of the previous meeting. At that time the minutes will be corrected, as necessary, and approved by the membership and certified by the Chair. The approved minutes will be maintained among the records of the ISCAP.

ARTICLE V. VOTING

A. Motions. When a decision or recommendation of the ISCAP is required to resolve a matter before it, the Chair shall request or accept a motion for a vote. Any member, including the Chair, may make a motion for a vote. No second shall be required to bring any motion to a vote. A quorum must be present when a vote is taken.

B. Eligibility. Only the members, including the Chair, may vote on a motion before the ISCAP, with each agency or office represented having one vote.

C. Voting Procedures. Votes shall ordinarily be taken and tabulated by a show of hands.

D. Passing a Motion. In response to a motion, members may vote affirmatively, negatively, or abstain from voting. Except as otherwise provided in these bylaws, a motion passes when it receives a majority of affirmative votes of the members voting. However, in no instance will the ISCAP reverse an agency's decision without the affirmative vote of at least a majority of the members present.

E. Votes in a Non-meeting Context. In extraordinary circumstances, the Chair may call for a vote of the membership outside the

context of a formal ISCAP meeting. An alternate member may also participate in such a vote if the primary member cannot. The Executive Secretary shall record and retain such votes in a documentary form and immediately report the results to the Chair and other primary and alternate members.

ARTICLE VI. FIRST FUNCTION: APPEALS OF AGENCY DECISIONS REGARDING CLASSIFICATION CHALLENGES

In accordance with section 5.4(b) of the Order, the ISCAP shall decide on appeals by authorized persons who have filed classification challenges under section 1.9 of the Order.

A. Jurisdiction. The ISCAP will consider appeals from classification challenges that otherwise meet the standards of the Order if:

1. The appeal is filed in accordance with these bylaws;

2. The appellant has previously challenged the classification action at the agency that originated or is otherwise responsible for the information in question in accordance with the agency's procedures or, if the agency has failed to establish procedures for classification challenges, by filing a written challenge directly with the agency head or designated senior agency official, as defined in section 1.1(j) of the Order;

3. The appellant has

(a) Received a final agency decision denying his or her challenge; or

(b) Not received (i) an initial written response to the classification challenge from the agency within 120 days of its filing, or (ii) a written response to an internal agency appeal within 90 days of the filing of the appeal;

4. There is no action pending in the federal courts regarding the information in question; and

5. The information in question has not been the subject of review by the federal courts or the ISCAP within the past two years.

B. Addressing of Appeals. Appeals should be addressed to: Executive Secretary, Interagency Security Classification Appeals Panel, Attn: Classification Challenge Appeals, c/o Information Security Oversight Office, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW., Room 5W, Washington, DC 20408.

The appeal must contain enough information for the Executive Secretary to be able to obtain all pertinent documents about the classification challenge from the affected agency. No classified information should be included within the initial appeal document. The Executive Secretary will arrange for the transmittal of classified information from the agency after receiving the appeal. If it is impossible for the appellant to file an appeal without including classified information, prior arrangements must be made by contacting the Information Security Oversight Office.

C. Timeliness of Appeals. An appeal to the ISCAP must be filed within 60 days of:

1. The date of the final agency decision; or

2. The agency's failure to meet the time frames established in paragraph (A)(3)(b) of this Article.

D. Rejection of Appeal. If the Executive Secretary determines that the appeal does not meet the requirements of the Order or these bylaws, the Executive Secretary shall notify the appellant in writing that the appeal will not be considered by the ISCAP. The notification shall include an explanation of why the appeal is deficient.

E. Preparation. The Executive Secretary shall notify the Chair and the designated senior agency official(s) of the affected agency(ies) when an appeal is lodged. Under the direction of the ISCAP, the Executive Secretary shall supervise the preparation of an appeal file, pertinent portions of which will be presented to the members of the ISCAP for their review prior to a vote on the appeal. The appeal file will eventually include all records pertaining to the appeal.

F. Resolution of Appeals. The ISCAP may vote to affirm the agency's decision, to reverse the agency's decision in whole or in part, or to remand the matter to the agency for further consideration. A decision to reverse an agency's decision requires the affirmative vote of at least a majority of the members present.

G. Notification. The Executive Secretary shall promptly notify in writing the appellant, the agency head, and designated senior agency official of the ISCAP's decision.

H. Agency Appeals. Within 60 days of receipt of an ISCAP decision that reverses a final agency decision, the agency head may petition the President through the Assistant to the President for National Security Affairs to overrule the decision of the ISCAP.

I. Protection of Classified Information. All persons involved in the appeal shall make every effort to minimize the inclusion of classified information in the appeal file. Any classified information contained in the appeal file shall be handled and protected in accordance with the Order and its implementing directives. Information being challenged for classification shall remain classified unless and until a final decision is made to declassify it. In no instance will the ISCAP declassify properly classified information solely because of an agency's failure to prescribe or follow appropriate procedures for handling classification challenges.

J. Maintenance of File. The Executive Secretary shall maintain the appeal file among the records of the ISCAP.

ARTICLE VII. SECOND FUNCTION: REVIEW OF AGENCY EXEMPTIONS FROM AUTOMATIC DECLASSIFICATION

In accordance with section 5.4(b) of the Order, the ISCAP shall approve, deny or amend agency exemptions from automatic declassification as provided in section 3.4(d) of the Order.

A. Agency Notification of Exemptions. The agency head or designated senior agency official shall notify the Executive Secretary of agency exemptions in accordance with the requirements of the Order and its implementing directives. Agencies shall provide any additional information or justification that the Executive Secretary believes is necessary or helpful in order for the ISCAP to review and decide on the exemption. The agency head may seek relief from the ISCAP from any request for information by the Executive Secretary to which the agency objects.

B. Preparation. The Executive Secretary shall notify the Chair of the agency submission. At the direction of the ISCAP, the Executive Secretary shall supervise the preparation of an exemption file, pertinent portions of which will be presented to the members of the ISCAP for their review prior to a vote on the exemptions. The exemption file will eventually include all records pertaining to the ISCAP's consideration of the agency's exemptions.

C. Resolution. The ISCAP may vote to approve an agency exemption, to deny an agency exemption, to amend an agency exemption, or to remand the matter to the agency for further consideration. A decision to deny or amend an agency exemption requires the affirmative vote of a majority of the members present.

D. Notification. The Executive Secretary shall promptly notify in writing the agency head and designated senior agency official of the ISCAP's decision.

E. Agency Appeals. Within 60 days of receipt of an ISCAP decision that denies or amends an agency exemption, the agency head may petition the President through the Assistant to the President for National Security Affairs to overrule the decision of the ISCAP.

F. Protection of Classified Information. Any classified information contained in the exemption file shall be handled and protected in accordance with the Order and its implementing directives. Information that the agency maintains is exempt from declassification shall remain classified unless and until a final decision is made to declassify it.

G. Maintenance of File. The Executive Secretary shall maintain the exemption file among the records of the ISCAP.

ARTICLE VIII. THIRD FUNCTION: APPEALS OF AGENCY DECISIONS DENYING DECLASSIFICATION UNDER MANDATORY REVIEW PROVISIONS OF THE ORDER

In accordance with section 5.4(b) of the Order, the ISCAP shall decide on appeals by parties whose requests for declassification under section 3.6 of the Order have been denied.

A. Jurisdiction. The ISCAP will consider appeals from denials of mandatory review for declassification requests that otherwise meet the standards of the Order if:

1. The appeal is filed in accordance with these bylaws;

2. The appellant has previously filed a request for mandatory declassification review at the agency that originated or is otherwise responsible for the information in question in accordance with the agency's procedures or, if the agency has failed to establish procedures for mandatory review, by filing a written request directly with the agency head or designated senior agency official;

3. The appellant has

(a) Received a final agency decision denying his or her request; or

(b) Not received (i) an initial decision on the request for mandatory declassification review from the agency within one year of its filing, or (ii) a final decision on an internal agency appeal within 180 days of the filing of the appeal;

4. There is no action pending in the federal courts regarding the information in question; and

5. The information in question has not been the subject of review by the federal courts or the ISCAP within the past two years.

B. Addressing of Appeals. Appeals should be addressed to: Executive Secretary, Interagency Security Classification Appeals Panel, Attn: Mandatory Review Appeals, c/o Information Security Oversight Office, National Archives and Records Administration, 7th and Pennsylvania Avenue, NW., Room 5W, Washington, DC 20408.

The appeal must contain enough information for the Executive Secretary to be able to obtain all pertinent documents about the request for mandatory declassification review from the affected agency.

C. Timeliness of Appeals. An appeal to the ISCAP must be filed within 60 days of:

1. The date of the final agency decision; or

2. The agency's failure to meet the time frames established in paragraph (A)(3)(b) of this Article.

D. Rejection of Appeal. If the Executive Secretary determines that the appeal does not meet the requirements of the Order or these bylaws, the Executive Secretary shall notify the appellant in writing that the appeal will not be considered by the ISCAP.

The notification shall include an explanation of why the appeal is deficient.

E. Preparation. The Executive Secretary shall notify the Chair and the designated senior agency official(s) of the affected agency(ies) when an appeal is lodged. Under the direction of the ISCAP, the Executive Secretary shall supervise the preparation of an appeal file, pertinent portions of which will be presented to the members of the ISCAP for their review prior to a vote on the appeal. The appeal file will eventually include all records pertaining to the appeal.

F. Narrowing Appeals. To expedite the resolution of appeals and minimize backlogs, the Executive Secretary is authorized to consult with appellants with the objective of narrowing or prioritizing the information subject to the appeal.

G. Resolution of Appeals. The ISCAP may vote to affirm the agency's decision, to reverse the agency's decision in whole or in part, or to remand the matter to the agency for further consideration. A decision to reverse an agency's decision requires the affirmative vote of at least a majority of the members present.

H. Notification. The Executive Secretary shall promptly notify in writing the appellant, the agency head, and designated senior agency official of the ISCAP's decision.

I. Agency Appeals. Within 60 days of receipt of an ISCAP decision that reverses a final agency decision, the agency head may petition the President through the Assistant to the President for National Security Affairs to overrule the decision of the ISCAP.

J. Protection of Classified Information. All persons involved in the appeal shall make every effort to minimize the inclusion of classified information in the appeal file. Any classified information contained in the appeal file shall be handled and protected in accordance with the Order and its implementing directives. Information that is subject to an appeal from an agency decision denying declassification under the mandatory review provisions of the Order shall remain classified unless and until a final decision is made to declassify it. In no instance will the ISCAP declassify properly classified information solely because of an agency's failure to prescribe or follow appropriate procedures for handling mandatory review for declassification requests and appeals.

K. Maintenance of File. The Executive Secretary shall maintain the appeal file among the records of the ISCAP. All information declassified as a result of ISCAP action shall be available for inclusion within the database established by the Archivist of the United States in accordance with section 3.8 of the Order.

ARTICLE IX. ADDITIONAL FUNCTIONS

In its consideration of the matters before it, the ISCAP shall perform such additional advisory functions as are consistent with and supportive of the successful implementation of the Order.

ARTICLE X. SUPPORT STAFF

As provided in section 5.4(a) of the Order, the Director of the Information Security Oversight Office will serve as Executive Secretary to the ISCAP, and the staff of the Information Security Oversight Office will provide program and administrative support for the ISCAP. The Executive Secretary will supervise the staff in this function pursuant to the direction of the Chair and ISCAP. On an as needed basis, the ISCAP may seek detailees from its member agencies to augment the staff of the Information Security Oversight Office in support of the ISCAP.

ARTICLE XI. RECORDS

A. Integrity of ISCAP Records. The Executive Secretary shall maintain separately documentary materials, regardless of their physical form or characteristics, that are produced by or presented to the ISCAP or its staff in the performance of the ISCAP's functions, consistent with applicable federal law.

B. Referrals. Any Freedom of Information Act request or other access request for a document that originated within an agency other than the ISCAP shall be referred to that agency for processing.

ARTICLE XII. ANNUAL REPORTS TO THE PRESIDENT

The ISCAP has been established for the sole purpose of advising and assisting the President in the discharge of his constitutional and discretionary authority to protect the national security of the United States (section 5.4(e) of the Order). As provided in section 5.4(a) of the Order, pertinent information and data about the activities of the ISCAP shall be included in the Reports to the President issued by the Information Security Oversight Office. The Chair, in coordination with the other members of the ISCAP and the Executive Secretary, shall determine what information and data to include in each Report.

ARTICLE XIII. APPROVAL, AMENDMENT, AND PUBLICATION OF BYLAWS

The approval and amendment of these bylaws shall require the affirmative vote of at least four of the ISCAP's members. In accordance with the Order, the Executive Secretary shall submit the approved bylaws and their amendments for publication in the FEDERAL REGISTER.

[61 FR 10854, Mar. 15, 1996]

PART 2002—GENERAL GUIDELINES FOR SYSTEMATIC DECLASSIFICATION REVIEW OF FOREIGN GOVERNMENT INFORMATION

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AUTHORITY: Sec. 3.3, E.O. 12356, 47 FR 14874, April 6, 1982.

SOURCE: 48 FR 4402, Jan. 31, 1983, unless otherwise noted.

§2002.1 Purpose.

These general guidelines for the systematic declassification review of foreign government information have been developed in accordance with the provisions of section 3.3 of Executive Order 12356, ''National Security Information,'' and §2001.31 of Information Security Oversight Office Directive No. 1. All foreign government information that has been incorporated into the permanently valuable records of the United States Government and that has been accessioned into the National Archives of the United States shall be systematically reviewed for declassification by the Archivist of the United States. Declassification reviews shall be conducted in accordance with the provisions of these general guidelines or, if available, in accordance with specific systematic review guidelines for foreign government information provided by the agency heads who have declassification authority over that information. All foreign government information—

(a) Not identified in §2002.6 of these general guidelines or in specific agency guidelines as requiring item-by-item declassification review and final determination by an agency declassification authority, and

(b) For which a prior declassification date has not been established, shall be declassified as that information becomes thirty years old.

§2002.2 Definition.

Foreign government information as used in these guidelines means:

(a) Information provided by a foreign government or governments, an international organization of governments, or any element thereof with the expectation, expressed or implied, that the information, the source of the information, or both, are to be held in confidence; or

(b) Information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence.

§2002.3 Scope.

(a) These guidelines apply to foreign government information that has been received or classified by the United States Government or its agents, and has been incorporated into records determined by the Archivist of the United States to have permanent value.

(b) Atomic energy information (including information originated prior to 1947 and not marked as such; information received from the United Kingdom or Canada marked ''Atomic,'' or information received from NATO marked ''Atomal'') that is defined and identified as ''Restricted Data'' or ''Formerly Restricted Data'' in Sections 11y and 142d of the Atomic Energy Act of 1954, as amended, is outside the scope of these guidelines. Such information is not subject to systematic review and may not be automatically downgraded or declassified. Any document containing information within the definition of ''Restricted Data'' or ''Formerly Restricted Data'' that is not so marked shall be referred to the Department of Energy Office of Classification for review and appropriate marking, except for licensing and related regulatory matters which shall be referred to the Division of Security, U.S. Nuclear Regulatory Commission.

§ 2002.4 Responsibilities.

(a) Foreign government information transferred to the General Services Administration for accession into the National Archives of the United States shall be reviewed by the Archivist of the United States for declassification in accordance with Executive Order 12356, the directives of the Information Security Oversight Office, these general guidelines, and any specific systematic declassification guidelines provided by the agency with declassification authority over the information.

(b) Accessioned foreign government information in file series concerning intelligence activities (including special activities), or intelligence sources or methods created after 1945, and cryptology records created after 1945, shall be subject to review by the Archivist for declassification as it becomes 50 years old. All other accessioned foreign government information shall be subject to review by the Archivist for declassification as it becomes 30 years old.

(c) Agency heads who have declassification jurisidiction over permanently valuable foreign government information in agency records not yet accessioned into the National Archives of the United States are encouraged to conduct systematic declassification reviews of it in accordance with the time limits specified in paragraph (b) of this section. These reviews shall comply with the provisions of Executive Order 12356, the directives of the Information Security Oversight Office, these general guidelines, and specific agency systematic review guidelines that have been issued in consultation with the Archivist of the United States and the ISOO Director.

(d) Foreign government information falling within any of the categories listed in § 2002.6 of these guidelines shall be declassified or downgraded only upon specific authorization of the agency that has declassification authority over it. Such information shall be referred to the responsible agency(ies) for review. Information so referred shall remain classified until the responsible agency(ies) has declassified it. If the responsible agency cannot be readily identified from the document or material, referral shall be made in accordance with § 2002.7 of these guidelines.

(e) When required, the agency having declassification authority over the information shall consult with foreign governments concerning its proposed declassification.

§ 2002.5 Effect of publication.

(a) Foreign government information shall be considered declassified when published in an unclassified United States Government executive branch publication (e.g., the *Foreign Relations of the United States* series) or when cleared for publication by United States Government executive branch officials authorized to declassify the information; or if officially published as unclassified by the foreign government(s) or international organization(s) of governments that furnished the information unless the fact of the U.S. Government's possession of the information requires continued protection.

(b) The unofficial publication, in the United States or abroad, of foreign government information contained in classified United States or foreign documents does not in or of itself constitute or permit the declassification of such information. Although prior unofficial publication is a factor to be considered in the systematic review process, there may be valid reasons for continued protection of the information which could preclude its declassification. In particular, the classification status of foreign government information which concerns or derives from intelligence activities (including special activities), intelligence sources or methods shall not be affected by any unofficial publication of identical or related information. The final declassification determination shall be made by the agency or agencies having declassification authority over it.

§ 2002.6 Categories requiring item-by-item review.

Foreign government information falling into the following categories require item-by-item review for declassification by agencies having declassification authority over it.

(a) Information exempted from declassification under any joint arrangement evidenced by an exchange of letters, memorandum of understanding, or other written record, with the foreign government or international organization of governments, or element(s) thereof, that furnished the information. Questions concerning the existence or applicability of such arrangements shall be referred to the agency or agencies having declassification authority over the records under review.

(b) Information related to the safeguarding of nuclear materials or facilities, foreign and domestic, including but not necessarily limited to vulnerabilities and vulnerability assessments of nuclear facilities and Special Nuclear Material.

(c) Nuclear arms control information (see also paragraph (k) of this section).

(d) Information regarding foreign nuclear programs (other than ''Restricted Data'' and ''Formerly Restricted Data''), such as:

(1) Nuclear weapons testing.

(2) Nuclear weapons storage and stockpile.

(3) Nuclear weapons effects, hardness, and vulnerability.

(4) Nuclear weapons safety.

(5) Cooperation in nuclear programs including, but not limited to, peaceful and military applications of nuclear energy.

(6) Exploration, production and import of uranium and thorium from foreign countries.

(e) Information concerning intelligence activities (including special activities) or intelligence or counterintelligence sources or methods including but not limited to intelligence, counterintelligence and covert action programs, plans, policies, operations, or assessments; or which would reveal or identify:

(1) Any present, past or prospective undercover personnel, installation, unit, or clandestine human agent, of the United States or a foreign government;

(2) Any present, past or prospective method, procedure, mode, technique or requirement used or being developed by the United States or by foreign governments, individually or in combination to produce, acquire, transmit, analyze, correlate, assess, evaluate or process intelligence or counterintelligence, or to support an intelligence or counterintelligence source, operation, or activity;

(3) The present, past or proposed existence of any joint United States and foreign government intelligence, counterintelligence, or covert action activity or facility, or the nature thereof. (For guidance on protecting United States foreign intelligence liaison relationships, see Director of Central Intelligence Directive ''Security Classification Guidance and Foreign Security Services,'' effective January 18, 1982.)

(f) Information that could result in or lead to actions which would place an individual in jeopardy attributable to disclosure of the information, including but not limited to:

(1) Information identifying any individual or organization as a confidential source of intelligence or counterintelligence.

(2) Information revealing the identity of an intelligence or covert action agent or agents.

(3) Information identifying any individual or organization used to develop or support intelligence, counterintelligence, or covert action agents, sources or activities.

(g) Information about foreign individuals, organizations or events which if disclosed, could be expected to:

(1) Adversely affect a foreign country's or international organization's present or future relations with the United States.

(2) Adversely affect present or future confidential exchanges beween the United States and any foreign government or international organization of governments.

(h) Information related to plans (whether executed or not, whether presented in whole or in part), programs, operations, negotiations, and assessments shared by one or several foreign governments with the United States, including but not limited to those involving the territory, political regime or government of another country, and which if disclosed could be expected to adversely affect the conduct of U.S. foreign policy or the conduct of another country's foreign policy with respect to a third country or countries.

This item would include contigency plans, plans for covert political, military or paramilitary activities or operations by a foreign government acting alone or jointly with the United States Government, and positions or actions taken by a foreign government alone or jointly with the United States concerning border disputes or other territorial issues.

(i) Information concerning arrangements with respect to foreign basing of cryptologic operations and/or foreign policy considerations relating thereto.

(j) Scientific information such as that concerning space, energy, climatology, communications, maritime, undersea, and polar projects, the disclosure of which could be expected to adversely affect current and/or future exchanges of such information between the United States and any foreign governments or international organizations of governments.

(k) Information on foreign policy aspects of nuclear matters, the disclosure of which could be expected to adversely affect cooperation between one or more foreign governments and the United States Government.

(l) Information concerning physical security arrangements, plans or equipment for safeguarding United States Government embassies, missions or facilities abroad, the disclosure of which could reasonably be expected to increase the vulnerability of such facilities to penetration, attack, take-over, and the like.

(m) Nuclear propulsion information.

(n) Information concerning the establishment, operation, and support of nuclear detection systems.

(o) Information concerning or revealing military or paramilitary escape, evasion, cover or deception plans, procedures, and techniques, whether executed or not.

(p) Information which could adversely affect the current or future usefullness of military defense policies, programs, weapons systems, operations, or plans.

(q) Information concerning research, development, testing and evaluation of chemical and biological weapons and defense systems; specific identification of chemical and biological agents and munitions; and chemical and biological warfare plans.

(r) Technical information concerning weapons systems and military equipment that reveals the capabilities, limitations, or vulnerabilities of such systems, or equipment that could be exploited to destroy, counter, render ineffective or neutralize such weapons or equipment.

(s) Cryptologic information, including cryptologic sources and methods, currently in use. This includes information concerning or revealing the processes, techniques, operations, and scope of signals intelligence comprising communications intelligence, electronics intelligence, and telemetry intelligence, the crytosecurity and emission security components of communications security, and the communications portion of cover and deception plans.

(t) Information concerning electronic warfare (electronic warfare support measures, electronic counter-countermeasures) or related activities, including but not necessarily limited to:

(1) Nomenclature, functions, technical characteristics or descriptions of communications and electronic equipment, its employment/development, and its association with weapoins systems or military operations.

(2) The processes, techniques, operations or scope of activities involved in the acquisition, analysis and evaluation of such information, and the degree of success achieved by the above processes, techniques, operations or activities.

(u) Present, past or proposed protective intelligence information relating to the sources, plans, techniques, equipment and methods used in carrying out assigned duties of protecting United States Government officials or other protectees abroad and foreign officials while in the United States or United States possessions. This includes information concerning the identification of witnesses, informants and persons suspected of being dangerous to persons under protection.

(v) Information on deposits of foreign official institutions in United States banks and on foreign official institutions' holdings, purchases and sales of

long-term marketable securities in the United States.

(w) Information concerning economic and policy studies and sensitive assessments or analyses of economic conditions, policies or activities of foreign countries or international organizations of governments received through the Multilateral Development Banks and Funds or through the International Monetary Fund (IMF) and the Organization for Economic Cooperation and Development (OECD).

(x) Information described in paragraphs (a) through (w) contained in correspondence, transcripts, memoranda of conversation, or minutes of meetings between the President of the United States or the Vice President of the United States and foreign government officials.

(y) Information described in paragrpahs (a) through (w) contained in documents originated by or sent to the Assistant to the President for National Security Affairs, his Deputy, members of the National Security Council staff, or any other person on the White House or the Executive Office of the President staffs performing national security functions.

(z) Federal agency originated documents bearing Presidential, National Security Council, or White House or Executive Office of the President staffs' comments relating to categories of information described in paragraphs (a) through (w).

(aa) Information as described in paragraphs (a) through (w) contained in correspondence to or from the President or the Vice President, including background briefing memoranda and talking points for meetings between the President or the Vice President and foreign government officials, and discussions of the timing and purposes of such meetings.

(bb) Information as described in paragraphs (a) through (w) contained in agency message traffic originated by White House or Executive Office of the President staff members but sent through agency communication networks.

§ 2002.7 Referral and decision.

(a) When the identity of the agencies having declassification authority over foreign government information is not apparent to the agency holding the information, or when reviewing officials do not possess the requisite expertise, the information shall be referred for review and a declassification determination as follows:

(1) Categories 2002.6 (b) through (d), Department of Energy or Nuclear Regulatory Commission (as appropriate).

(2) Categories 2002.6 (e) and (f), Central Intelligence Agency.

(3) Categories 2002.6 (g) through (l), Department of State.

(4) Categories 2002.6 (m) through (t), Department of Defense.

(5) Categories 2002.6 (u) and (w), Department of the Treasury.

(6) Categories 2002.6 (x) through (bb), National Security Council.

(b) Referrals to agencies shall include copies of the documents containing the foreign government information. Agencies shall review the referred documents and promptly notify the Archivist of the United States of the declassification determination. Forwarded copies of the documents shall be marked to reflect any downgrading or declassification action and shall be returned to the National Archives.

§ 2002.8 Downgrading.

Foreign government information classified ''Top Secret'' may be downgraded to ''Secret'' after 30 years unless the agency with declassification authority over it determines on its own, or after consultation, as appropriate, with the foreign government or international organization of governments which furnished the information, that it requires continued protection at the ''Top Secret'' level.

PART 2003—NATIONAL SECURITY INFORMATION—STANDARD FORMS

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2003.32 DATA DESCRIPTOR Label SF 711.

AUTHORITY: Sec. 5.2(b)(7) of E.O. 12356.

Subpart A—General Provisions

§ 2003.1 Purpose.

The purpose of the standard forms prescribed in subpart B 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.

[48 FR 40849, Sept. 9, 1983]

§ 2003.2 Scope.

The use of the standard forms prescribed in subpart B is mandatory for all departments, and independent agencies or offices of the executive branch that create and/or handle national security information. As appropriate, these departments, and independent agencies or offices may mandate the use of these forms by their contractors, licensees or grantees who are authorized access to national security information.

[48 FR 40849, Sept. 9, 1983]

§ 2003.3 Waivers.

Except as specifically provided, waivers from the mandatory use of the standard forms prescribed in subpart B may be granted only by the Director of ISOO.

[52 FR 10190, Mar. 30, 1987]

§ 2003.4 Availability.

Agencies may obtain copies of the standard forms prescribed in subpart B by ordering through FEDSTRIP/MILSTRIP or from the General Services Administration (GSA) Customer Supply Centers (CSCs). The national stock number of each form is cited with its description in subpart B.

[50 FR 51826, Dec. 19, 1985]

Subpart B—Prescribed Forms

§ 2003.20 Classified Information Nondisclosure Agreement: SF 312; Classified Information Nondisclosure Agreement: SF 189; Classified Information Nondisclosure Agreement (Industrial/Commercial/Non-Government): SF 189–A.

(a) SF 312, SF 189, and SF 189–A are nondisclosure agreements between the United States and an individual. The prior execution of at least one of these agreements, as appropriate, by an individual is necessary before the United States Government may grant that individual access to classified information. From the effective date of this rule, September 29, 1988, the SF 312 shall be used in lieu of both the SF 189 and the SF 189–A for this purpose. In any instance in which the language in the SF 312 differs from the language in either the SF 189 or SF 189–A, agency heads shall interpret and enforce the SF 189 or SF 189–A in a manner that is fully consistent with the interpretation and enforcement of the SF 312.

(b) All employees of executive branch departments, and independent agencies or offices, who have not previously signed the SF 189, must sign the SF 312 before being granted access to classified information. An employee who has previously signed the SF 189 is permitted, at his or her own choosing, to substitute a signed SF 312 for the SF 189. In these instances, agencies shall take all reasonable steps to dispose of the superseded nondisclosure agreement or to indicate on it that it has been superseded.

(c) All Government contractor, licensee, and grantee employees, or other non-Government personnel requiring access to classified information in the performance of their duties, who have not previously signed either the

SF 189 or the SF 189–A, must sign the SF 312 before being granted access to classified information. An employee who has previously signed either the SF 189 or the SF 189–A is permitted, at his or her own choosing, to substitute a signed SF 312 for either the SF 189 or the SF 189–A. In these instances, agencies, with the cooperation of the pertinent contractor, licensee or grantee, shall take all reasonable steps to dispose of the superseded nondisclosure agreement or to indicate on it that it has been superseded.

(d) Agencies may require other persons, who are not included under paragraphs (b) or (c) of this section, and who have not previously signed either the SF 189 or the SF 189–A, to execute SF 312 before receiving access to classified information. A person in such circumstances who has previously signed either the SF 189 or the SF 189–A is permitted, at his or her own choosing, to substitute a signed SF 312 for either the SF 189 or the SF 189–A. In these instances, agencies shall take all reasonable steps to dispose of the superseded nondisclosure agreement or to indicate on it that it has been superseded.

(e) The use of the ''Security Debriefing Acknowledgement'' portion of the SF 312 is optional at the discretion of the implementing agency.

(f) 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.

(g) The provisions of the SF 312, the SF 189, and the SF 189–A do not supersede the provisions of section 2302, title 5, United States Code, which pertain to the protected disclosure of information by Government employees, or any other laws of the United States.

(h)(1) *Modification of the SF 189.* The second sentence of paragraph 1 of every executed copy of the SF 189 is clarified to read:

> As used in this Agreement, classified information is marked or unmarked classified information, including oral communications, that is classified under the standards of Executive Order 12356, or under any other Executive order or statute that prohibits the unauthorized disclosure of information in the interest of national security; and unclassified information that meets the standards for classification and is in the process of a classification determination as provided in sections 1.1(c) and 1.2(e) of Executive Order 12356, or under any other Executive order or statute that requires protection for such information in the interest of national security.

(2) *Scope of ''classified information''.* As used in the SF 312, the SF 189, and the SF 189–A, ''classified information'' is marked or unmarked classified information, including oral communications; and unclassified information that meets the standards for classification and is in the process of a classification determination, as provided in sections 1.1(c) and 1.2(e) of Executive Order 12356 or any other statute or Executive order that requires interim protection for certain information while a classification determination is pending. ''Classified information'' does not include unclassified information that may be subject to possible classification at some future date, but is not currently in the process of a classification determination.

(3) *Basis for liability.* A party to the SF 312, SF 189 or SF 189–A may be liable for disclosing ''classified information'' only if he or she knows or reasonably should know that: (i) The marked or unmarked information is classified, or meets the standards for classification and is in the process of a classification determination; and (ii) his or her action will result, or reasonably could result in the unauthorized disclosure of that information.

In no instance may a party to the SF 312, SF 189 or SF 189–A be liable for violating its nondisclosure provisions by disclosing information when, at the time of the disclosure, there is no basis to suggest, other than pure speculation, that the information is classified

or in the process of a classification determination.

(4) *Modification of the SF 312, SF 189 and SF 189–A.*

(i) Each executed copy of the SF 312, SF 189 and SF 189–A, whether executed prior to or after the publication of this rule, is amended to include the following paragraphs 10 and 11.

10. These restrictions are consistent with and do not supersede, conflict with or otherwise alter the employee obligations, rights or liabilities created by Executive Order 12356; section 7211 of title 5 U.S.C. (governing disclosures to Congress); section 1034 of title 10 U.S.C., as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5 U.S.C., as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 *et seq.*) (governing disclosures that could expose confidential Government agents), and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18 U.S.C., and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. section 783(b)). The definitions, requirements, obligations, rights, sanctions and liabilities created by said Executive Order and listed statutes are incorporated into this Agreement and are controlling.

11. I have read this Agreement carefully and my questions, if any, have been answered. I acknowledge that the briefing officer has made available to me the Executive Order and statutes referenced in this Agreement and its implementing regulation (32 CFR 2003.20) so that I may read them at this time, if I so choose.

(ii) The first sentence of paragraph 7 of each executed copy of the SF 312, SF 189 and SF 189–A, whether executed prior to or after the publication of this rule, is amended to read:

I understand that all classified information to which I have access or may obtain access by signing this Agreement is now and will remain the property of, or under the control of the United States Government unless and until otherwise determined by an authorized official or final ruling of a court of law.

The second sentence of paragraph 7 of each executed copy of the SF 312 (September 1988 version), SF 189 and SF 189–A, which reads, ''I do not now, nor will I ever, possess any right, interest, title or claim whatsoever to such information,'' and whether executed prior to or after the publication of this rule, is deleted.

(i) *Points of clarification.* (1) As used in paragraph 3 of SF 189 and SF–189–A, the word ''indirect'' refers to any situation in which the knowing, willful or negligent action of a party to the agreement results in the unauthorized disclosure of classified information even though the party to the agreement does not directly communicate, deliver or transmit classified information to a person who is not authorized to receive it.

(2) As used in paragraph 7 of SF 189, ''information'' refers to ''classified information,'' exclusively.

(3) As used in the third sentence of paragraph 7 of SF 189 and SF 189–A, the words ''all materials which have, or may have, come into my possession,'' refer to ''all classified materials which have or may come into my possession,'' exclusively.

(j) 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 (OPF) 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 Defense Industrial Security Program shall deliver the copy or legally enforceable facsimile of the executed SF 312, SF 189 or SF 189–A of a terminated employee to the Defense Industrial Security Clearance Office. Each agency shall inform ISOO of the file systems that it uses to store these agreements for each category of affected individuals.

(k) Only the National Security Council 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 ISOO, along with a justification for its use. The Director of ISOO will request a determination about the alternative agreement's enforceability from the Department of Justice prior to making a recommendation to the National Security Council. An agency that has previously received a waiver from the use of the SF 189 or the SF 189–A need not seek a waiver from the use of the SF 312.

(l) The national stock number for the SF 312 is 7540–01–280–5499.

[53 FR 38279, Sept. 29, 1988, as amended at 56 FR 2645, Jan. 23, 1991; 56 FR 27559, June 14, 1991]

§ 2003.21 Security Container Information: SF 700.

(a) 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.

(b) SF 700 shall be used in all situations that call for the use of a security container information form. Agency-wide use of SF 700 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.

(c) 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 as required by applicable executive order(s), statute(s) or implementing security regulations.

(d) Only the Director of the Information Security Oversight Office (ISOO) may grant an agency's application for a waiver from the use of SF 700. 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 ISOO Director will review the request and notify the agency of the decision.

(e) The national stock number for the SF 700 is 7540–01–214–5372.

[50 FR 51826, Dec. 19, 1985]

§ 2003.22 Activity Security Checklist: SF 701.

(a) 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.

(b) SF 701 shall be used in all situations that call for the use of an activity security checklist. Agency-wide use of SF 701 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.

(c) Completion, storage and disposition of SF 701 will be in accordance with each agency's security regulations.

(d) Only the Director of the Information Security Oversight Office (ISOO) may grant an agency's application for a waiver from the use of SF 701. 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 ISOO Director will review the request and notify the agency of the decision.

(e) The national stock number for the SF 701 is 7540–01–213–7899.

[50 FR 51826, Dec. 19, 1985]

§ 2003.23 Security Container Check Sheet: SF 702.

(a) SF 702 provides a record of the names and times that persons have opened, closed or checked a particular container that holds classified information.

(b) SF 702 shall be used in all situations that call for the use of a security container check sheet. Agency-wide use of SF 702 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.

(c) Completion, storage and disposal of SF 702 will be in accordance with each agency's security regulations.

(d) Only the Director of the Information Security Oversight Office (ISOO) may grant an agency's application for a waiver from the use of SF 702. 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 ISOO Director will review the request and notify the agency of the decision.

(e) The national stock number of the SF 702 is 7540–01–213–7900.

[50 FR 51826, Dec. 19, 1985]

§ 2003.24 TOP SECRET Cover Sheet: SF 703.

(a) 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.

(b) SF 703 shall be use in all situations that call for the use of a TOP SECRET cover sheet. Agency-wide use of SF 703 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.

(c) SF 703 is affixed to the top of the TOP SECRET document and remains attached until the document is destroyed. At the time of destruction, SF 703 is removed and, depending upon its condition, reused.

(d) Only the Director of the Information Security Oversight Office (ISOO) may grant any agency's application for a waiver from the use of SF 703. 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 ISOO Director will review the request and notify the agency of the decision.

(e) The national stock number of the SF 703 is 7540–01–213–7901.

[50 FR 51826, Dec. 19, 1985]

§ 2003.25 SECRET Cover Sheet: SF 704.

(a) 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.

(b) SF 704 shall be use in all situations that call for the use of a SECRET cover sheet. Agency-wide use of SF 704 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.

(c) SF 704 is affixed to the top of the SECRET document and remains attached until the document is destroyed. At the time of destruction, SF 704 is removed and, depending upon its condition, reused.

(d) Only the Director of the Information Security Oversight Office (ISOO) may grant any agency's application for a waiver from the use of SF 704. 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 ISOO Director will review the request and notify the agency of the decision.

(e) The national stock number of the SF 704 is 7540–01–213–7902.

[50 FR 51827, Dec. 19, 1985]

§ 2003.26 CONFIDENTIAL Cover Sheet: SF 705.

(a) 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.

(b) SF 705 shall be use in all situations that call for the use of a CONFIDENTIAL cover sheet. Agency-wide use of SF 705 shall begin when supplies of existing forms are exhausted or September 30, 1986, whichever occurs earlier.

(c) SF 705 is affixed to the top of the CONFIDENTIAL document and remains attached until the document is destroyed. At the time of destruction, SF 705 is removed and, depending upon its condition, reused.

(d) Only the Director of the Information Security Oversight Office (ISOO) may grant any agency's application for a waiver from the use of SF 705. 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 ISOO Director will review the request and notify the agency of the decision.

(e) The national stock number for the SF 705 is 7540–01–213–7903.

[50 FR 51827, Dec. 19, 1985]

§ 2003.27 TOP SECRET Label SF 706.

(a) SF 706 is used to identify and protect automatic data processing (ADP) media and other media that contain TOP SECRET information. SF 706 is used instead of the SF 703 for media other than documents.

(b) SF 706 shall be used in all situations that call for the use of a TOP SECRET Label. Agency-wide use of SF 706 shall begin when supplies of existing forms are exhausted or January 31, 1988, whichever occurs earlier.

(c) 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.

(d) Only the Director of ISOO may grant a waiver from the use of SF 706. 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.

(e) The national stock number of the SF 706 is 7540–01–207–5536.

[52 FR 10190, Mar. 30, 1987]

§ 2003.28 SECRET Label SF 707.

(a) SF 707 is used to identify and protect automatic data processing (ADP) media and other media that contain SECRET information. SF 707 is used instead of the SF 704 for media other than documents.

(b) SF 707 shall be used in all situations that call for the use of a SECRET Label. Agency-wide use of SF 707 shall begin when supplies of existing forms are exhausted or January 31, 1988, whichever occurs earlier.

(c) 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.

(d) Only the Director of ISOO may grant a waiver from the use of SF 707. 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.

(e) The national stock number of the SF 707 is 7540–01–207–5537.

[52 FR 10190, Mar. 30, 1987]

§ 2003.29 CONFIDENTIAL Label SF 708.

(a) SF 708 is used to identify and protect automatic data processing (ADP) media and other media that contain CONFIDENTIAL information. SF 708 is used instead of the SF 705 for media other than documents.

(b) SF 708 shall be used in all situations that call for the use of a CONFIDENTIAL Label. Agency-wide use of SF 708 shall begin when supplies of existing forms are exhausted or January 31, 1988, whichever occurs earlier.

(c) 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.

(d) Only the Director of ISOO may grant a waiver from the use of SF 708. 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.

(e) The national stock number of the SF 708 is 7540–01–207–5538.

[52 FR 10190, Mar. 30, 1987]

§ 2003.30 CLASSIFIED Label SF 709.

(a) SF 709 is used to identify and protect automatic data processing (ADP) media and other media that contain classified information pending a determination by the classifier of the specific classification level of the information.

(b) SF 709 shall be used in all situations that require the use of a CLASSIFIED Label. Agency-wide use of SF 709 shall begin when supplies of existing

forms are exhausted or January 31, 1988, whichever occurs earlier.

(c) 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 spedific level of classification of the information contained on the medium, either SF 706, SF 707, or SF 708 shall be affixed on top of SF 709 so that only the SF 706, SF 707, or SF 708 is visible.

(d) Only the Director of ISOO may grant a waiver from the use of SF 709. 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.

(e) The national stock number of the SF 709 is 7540–01–207–5540.

[52 FR 10190, Mar. 30, 1987]

§ 2003.31 UNCLASSIFIED Label SF 710.

(a) In a mixed environment in which classified and unclassified information are being processed or stored, SF 710 is used to identify automatic data processing (ADP) 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.

(b) SF 710 shall be used in all situations that require the use of an UNCLASSIFIED Label. Agency-wide use of SF 710 shall begin when supplies of existing forms are exhausted or January 31, 1988, whichever occurs earlier.

(c) 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.

(d) Only the Director of ISOO may grant a waiver from the use of SF 710. 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.

(e) The national stock number of the SF 710 is 7540–01–207–5539.

[52 FR 10191, Mar. 30, 1987]

§ 2003.32 DATA DESCRIPTOR Label SF 711.

(a) SF 711 is used to identify additional safeguarding controls that pertain to classified information that is stored or contained on automatic data processing (ADP) or other media.

(b) SF 711 shall be used in all situations that require the use of a DATA DESCRIPTOR Label. Agency-wide use of SF 711 shall begin when supplies of existing forms are exhausted or January 31, 1988, whichever occurs earlier.

(c) SF 711 is affixed to the ADP medium containing classified information in a manner that would not adversely affect operation of equipment in which the medium is used. 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.

(d) Only the Director of ISOO may grant a waiver from the use of SF 711. 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.

(e) The national stock number of the SF 711 is 7540–01–207–5541.

[52 FR 10191, Mar. 30, 1987]

CHAPTER XXI—NATIONAL SECURITY COUNCIL

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PART 2102—RULES AND REGULATIONS TO IMPLEMENT THE PRIVACY ACT OF 1974

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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

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Subpart B—Original Classification

2103.11 Basic policy.
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2103.14 Challenges to classification.

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2103.21 Definition and application.

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2103.31 Declassification authority.
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Subpart E—Safeguarding

2103.41 Reproduction controls.

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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

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PART 2400—REGULATIONS TO IMPLEMENT E.O. 12356; OFFICE OF SCIENCE AND TECHNOLOGY POLICY INFORMATION SECURITY PROGRAM

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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

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PART 2700—SECURITY INFORMATION REGULATIONS

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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. Correctly designated at 44 FR 51990, Sept. 6, 1979, unless otherwise noted.

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.

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PART 2800—SECURITY PROCEDURES

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ATTACHMENTS TO PART 2800

ATTACHMENT 1—EMPLOYMENT AGREEMENT & INDOCTRINATION STATEMENT
ATTACHMENT 2—SECURITY TERMINATION STATEMENT
ATTACHMENT 3—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 reqired 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

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

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)

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

CHAPTER XXIX—PRESIDENTIAL COMMISSION ON THE ASSIGNMENT OF WOMEN IN THE ARMED FORCES

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PART 2900—REGULATIONS FOR IMPLEMENTATION OF THE FREEDOM OF INFORMATION ACT

Sec.
2900.1 General.
2900.2 Requests for records.
2900.3 Schedule of fees and methods of payment.

AUTHORITY: 5 U.S.C. 552.

SOURCE: 57 FR 49394, Nov. 2, 1992, unless otherwise noted.

§ 2900.1 General.

This part implements the Freedom of Information Act, section 552 of title 5, United States Code, and prescribes rules governing the availability to the public of documents and records of the Commission.

§ 2900.2 Requests for records.

(a) It is the policy of the Commission to make records and documents in its possession available to the public to the greatest extent possible. All records of the Commission are available for public inspection and copying in accordance with this section except those records or portions of records which the Executive Secretary or her designee specifically determines to be exempt from disclosure under section 552(b) of the Freedom of Information Act.

(b) A request for records shall be made in writing and directed to the Executive Secretary, Presidential Commission on the Assignment of Women in the Armed Forces, 1001 Pennsylvania Avenue NW., suite 275N, Washington, DC 20004. Such request, as well as the envelope containing the request, shall be clearly marked ''Freedom of Information Act Request'' and shall reasonably describe the record requested. Requests lacking a reasonable description will be filled only after a more comprehensive description is provided. The staff of the Commission will make reasonable efforts to assist a requester in formulating this request. Nothing in this section shall preclude staff of the Commission from complying with oral, unmarked, or generally stated requests for information and documents.

(c)(1) The Executive Secretary or her designee shall, within ten days after its receipt (excepting Saturdays, Sundays, and legal federal holidays), either comply with or deny a request for records, provided that when additional time is required because of:

(i) A need to search for, collect and examine a voluminous amount of separate and distinct records demanded in a single request; or

(ii) A need for consultation with another agency having a substantial interest in the determination of the request.

(2) The time limit for disposing of the request may be extended for up to ten additional working days by written notice to the requester setting forth the reasons for and the anticipated length of the delay.

(d) The requester will be notified promptly of the determination made pursuant to paragraph (c) of this section. If the determination is to release the requested record, such record shall promptly be made available. If the determination is not to release the record, the person making the request shall, at the same time he is notified of such determination, be notified of:

(1) The reason for the determination;

(2) The name and title or position of each person responsible for the denial of his request; and

(3) The right to appeal the determination to the Chairman of the Commission within 30 days of receipt of a notice denying the request. An appeal shall be made in writing to the General Counsel, Presidential Commission on the Assignment of Women in the Armed Forces, 1001 Pennsylvania Avenue, NW., suite 275N, Washington, DC 20004. Both the envelope and the letter of appeal must be clearly marked ''Freedom of Information Act Appeal.'' Unless the Chairman of the Commission otherwise directs, the General Counsel shall act on behalf of the Chairman of the Commission on all appeals. In no case, however, shall the individual who made the initial denial of the request render a decision on an appeal. A decision shall be rendered on an appeal within 20 days (excepting Saturdays, Sundays, and legal federal holidays) after the receipt of such appeal. The requester shall be notified promptly of the decision and, if the appeal is

denied, the reasons therefor and the requester's right to seek judicial review of such determination pursuant to the provisions of the Freedom of Information Act, 5 U.S.C. 552(a)(4).

§ 2900.3 Schedule of fees and methods of payment.

(a) *Definitions.* The following definitions apply in this section.

(1) *Direct costs* means those expenditures which the Commission actually incurs in searching for, duplicating, and (in the case of commercial use requests) reviewing documents to respond to a FOIA request.

(2) *Search* means 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. Line-by-line search will not be done when duplicating an entire document is a less expensive and quicker method of complying with a request. ''Search'' is distinguished from ''review'' (see paragraph (a)(4) of this section).

(3) *Duplication* means the process of making a copy of a document available to a requester. Copies can take the form of paper copy or audio-visual materials among others; however, copies will be provided in a form that is reasonably usable by requesters.

(4) *Review* means the process of examining documents located in response to an information request to determine whether any portion of any document is permitted to be withheld under FOIA. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) *Commercial use request* refers to a request from or made on behalf of one who seeks information to further the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. This would include a request made for information to further such interests through litigation. In determining whether a requester properly belongs in this category, the Commission may request information concerning the use to which a requester will put the requested documents.

(6) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) *Non-commercial scientific institution* means an institution that is not operated on a ''commercial'' basis (as that term is defined 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) *Representative of the news media* means 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 where they qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. ''Freelance'' journalists 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 Commission may also look to the past publication record of a requester in making this determination.

(b) *Cost to be included in fees.* The agency costs included in fees will vary according to the following categories of requests:

(1) *Commercial use requests.* Fees will include the Commission's full direct costs of searching for, reviewing for release, and duplicating the requested records.

(2) *Educational and non-commercial scientific institution requests.* The Commission will provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first two hours of search time and the first 100 pages (see paragraph (e) of this section). To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records 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.

(3) *Requests from representatives of the news media.* The Commission will provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first two hours of search time and the first 100 pages (*see* paragraph (e) of this section). To be eligible for inclusion in this category a requester must meet the criteria in paragraph (a)(8) of this section.

(4) *All other requests.* The Commission will charge requesters who do not fit into any of the categories in paragraphs (b) (1) through (3) of this section fees which cover the full direct costs of searching for and reproducing records that are responsive to the request, except for the first two hours of search time and the first 100 pages (*see* paragraph (e) of this section). However, requests from persons for records about themselves will be treated under the fee provision of the Privacy Act of 1974, 5 U.S.C. 552a.

(c) *Fee calculation.* The Commission will calculate fees as follows:

(1) *Search.* $16.50 per hour.

(2) *Review (commercial-use requests only).* $16.50 per hour. Only the review necessary at the initial administrative level to determine the applicability of any exemption, and not review at the administrative appeal level, will be included in the fee. The Commission may charge for each review conducted to determine the applicability of different exemptions.

(3) *Duplication.* At 20 cents per page for paper copy. For copies of records prepared by computer, requester will be charged reasonable direct costs of making a copy, including operator time. A request for records prepared by computer must be accompanied by either 3.5″ diskette with 1.44 MB capacity or a 5.25″ diskette with 1.2 MB capacity. Computer printouts will be charged at 20 cents per page.

(4) *Additional services.* Postage and other additional services requested above and beyond normal FOIA processing, such as express mail or courier delivery, will be charged at actual cost.

(d) *Assessment of interest.* The Commission may begin assessing interest charges on the 31st day following the day the fee bill is sent. Interest will be at the rate prescribed in section 31 U.S.C. 3717.

(e) *Free search and duplication.* Except for commercial use requests, the Commission (in accordance with 5 U.S.C. 552(a)(4)(A)(iv)) will provide the first 100 pages of duplication and the first two hours of search time to requesters without charge. In addition, the Commission will not impose a charge if the cost of collecting a fee will be equal to or greater than the fee itself. These provisions work together so that the Commission will not begin to assess fees until after providing the free search and reproduction.

(f) *Waiver or reduction of fees.* In accordance with 5 U.S.C. 552(a)(4)(A)(iii), the Commission will furnish documents without charge, or at a reduced charge, where 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 government and is not primarily in the commercial interest of the requester.

(g) *Remittances.* (1) Remittances shall be in the form of either a bank draft drawn on a bank in the United States, a money order, or cash.

(2) Remittances shall be made payable to the order of the U.S. Treasury and mailed or delivered to the Executive Secretary, Presidential Commission on the Assignment of Women in the Armed Forces, 1001 Pennsylvania Ave., NW., suite 275N, Washington, DC 20004. The Commission will assume no responsibility for cash which is lost in the mail.

(3) A receipt for fees paid will be given only upon request.

(4) Where it is anticipated that the fees chargeable under this section amount to more than $250.00, and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester will be notified of the amount of the anticipated fee. If the requester does not agree to pay the estimated fees, the Commission may suspend the search and processing of records or, when appropriate (see paragraph (h) of this section), require an advance deposit. Requesters may confer with Commission personnel in an attempt to formulate the request so as to meet their needs at lower cost.

(h) *Advance payment fees.* The Commission will not require a requester to make an advance payment, *i.e.,* payment before work is commenced or continued on a request, except in the following situations:

(1) When the allowable charges that a requester will be required to pay are projected to exceed $250.00, the Commission may require the requester to make an advance payment of the entire fee, or a portion of the fee, before continuing to process the request.

(2) If a requester has previously failed to pay a fee charged in a timely fashion (*i.e.,* within 30 days of the billing date), the Commission will require the requester to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before it begins to process a new request or a pending request from the requester.

(i) *Other provisions*—(1) *Charges for unsuccessful search.* The Commission may assess charges for time spent searching for requested records, even if the search fails to locate responsive records or the records are determined, after review, to be exempt from disclosure.

(2) *Aggregating requests to avoid fees.* When the Commission reasonably determines that a requester is attempting to break a single request down into a series of requests for the purpose of evading the assessment fees, the Commission aggregate any such requests and charge the applicable fee. However, the Commission will not aggregate multiple requests on unrelated subjects from one requester.

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1602.24 Revised 24454
1602.25 Revised 24454
1605.6 Revised 8890
1605.51 (b) removed* 24454
1605.81 (b) revised 24454
1609.1 Revised 24454
1618.3 Removed* 24454
1621.1 Revised 24454
1621.3 Revised 8890
1624.4 (b) and (c) revised 24455
1624.5 (a) revised 24455
1624.6 (a) and (e) removed*; (b) and (j) revised 24455
1624.7 Revised 24455
1624.10 Revised 24455
1630.13 Revised 24455
1630.16 Revised 8891
(b) corrected 12641
1630.17 Revised 8891
1630.18 Revised 24456
1630.30 Revised 24456

*See also document published at 51 FR 17618, May 14, 1986. For other documents related to this amendment, see Pub. L. 99–500; House Report: No. 99–977 (Comm. of Conference); House Report: No. 99–731 (Comm. on Appropriations); Congressional Record, Vol. 132 (1986): S 14764; Congressional Record, Vol. 132 (1986): H 6818.

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1630.31 Revised 24456
1630.40 (a) introductory text revised; (a)(4) removed* 24456
1630.44 Revised 24456
1630.45 Heading and (a) revised 24456
1630.48 Revised 24456
1633.1 (f) revised 8891
(e) and (f) revised 24456
1633.2 Revised 24457
1633.6 Revised 8891, 24457
1633.7 (b) revised; (c) removed* 24457
1633.10 Revised 24457
1633.11 Revised 24457
1636.3 (a) revised 24457
1636.6 Heading revised 24457
1636.8 (a)(3) revised 24457
1639.3 (a)(1) revised 24458
1639.6 Heading revised 24458
1639.7 (c) revised 24458
1642 Heading revised 24458
1642.3 Revised 24458
1642.4 (a)(4) revised; (b) removed* 24458
1642.5 Added 24458
1642.7 (a) revised; (c) removed* 24458
1648.1 Revised 24458
1648.2 Removed* 24458
1648.3 (c) revised 8891
(a) and (c) revised 24458
1648.4 (b) revised 24458
1648.5 (a) and (i) revised 24459
1648.6 (a) revised 24459
1651.1 (b) revised 24459
1651.4 (a), (j), (n)(3) and (r) revised 24459
1653.3 Heading, (a) and (k) revised 24459
1656.2 Revised 8891
1656.5 (e) revised 8892
1657 Revised 24459
1662.6 Revised 13665
1698 Added 24460

Chapter XIX

1900 Revised 46456

Chapter XX

2001.43 (a)(1) revised 28418
2003.3 Revised 10190
2003.20 (e) amended 10190
Revised 28802
(h)(1) revised 29793, 48367
(h)(1)(i)(*b*) corrected 49250
2003.27 Added 10190
2003.28 Added 10190

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Chapter XX—Continued
2003.29 Added 10190
2003.30 Added 10190
2003.31 Added 10191
2003.32 Added 10191

1988

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Chapter VII
809d Removed 49320
818 Revised 24688
838 Added 30255
855 Authority citation revised 19297
855.15 Table 1 revised 19297
884 Revised 4014
887 Revised 876

Chapter XII
1285 Revised 27963
1285.8 (e), (f), and (g) redesignated as (f), (g), and (h); new (e) added 38716
1285 Appendix G amended 38716
1293 Added 45462

Chapter XVI
1636.9 (c) and (d) removed 25328

Chapter XIX
1900.43 (e) added 32388
1900.44 Added 32388

Chapter XX
2003.20 Revised 38279

1989

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Chapter VII
806b.13 (a)(3) revised; (b) (19) and (20) added 13521
(b)(20) correctly designated; (b)(20)(i) corrected 14957
861.6 (d)(1) (i) through (xi) revised; (d)(1) (xii) and (xiii) added 31185
863 Added 1169

Chapter XVI
1656.5 (a)(1)(iii) removed 27001
1697 Added 48098

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Chapter VII
806b.13 (b)(6)(iii) revised 31384
(a)(5) revised 42370
807 Revised 36631
813 Revised 20787
836 Removed 20787
842 Revised 2809
842.49 (f) revised 32076
842.57 (a)(4) amended; (b) revised; (c) removed; (d) and (e) redesignated as (c) and (d) 32076
842.84 (a)(2) introductory text, (iv), (b)(3) introductory text, and (iv) amended 32077
842.89 (a) and (d) revised 32077
842.95 (b) revised 32077
842.109 (d) revised 32077
847 Removed 18600

Chapter XII
1286 Appendix H amended 32913

Chapter XX
2001.44 (c)(1) revised 38030

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Chapter VII
806b Authority citation revised 33384
806b.13 (b)(19)(i), (ii) and (iii) removed; (b)(20) redesignated as (b)(19) 33384
(b)(7) and (10) revised 42939
(b)(7)(i) and (10)(i) revised 60923
811 Revised 953
811.8 (a) table corrected 10945
Corrected 12583
842.2 (e) amended 1574
842.11 (d) removed; (e) redesignated as (d) 1574
842.23 (a)(2) amended 1574
842.42 (f)(11) added 1574
842.57 (a)(5) introductory text revised; (a)(6) amended; (e) added 1574
842.84 (b)(3) introductory text revised 1574
842.88 (e) introductory text revised; (e)(6) added 1574
842.136 (a) revised; (c)(1) amended 1574
852 Removed 13589

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Chapter VII—Continued
861 Revised 30328
884 Revised 1733
953 Removed 371

Chapter XII
1285 Revised 65423
1286 Redesignated as part 323 57803

Chapter XIX
1904 Added 41458
1905 Added 41459

Chapter XX
2003.20 (h)(4) added; (j) revised 2645
(j) corrected 27559
Heading corrected 27901

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Chapter VII
806 Revised 41396
860 Removed 2840
861 Revised 44683

Chapter XIX
1906 Added 39610

Chapter XXIX
Chapter XXIX Established 49394

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Chapter VII
954 Removed 4902
988 Removed 13008

1994

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Chapter VII
806 Revised 50835
806b Revised 53099
806b.13 (b)(6), (14), (15), and (16) introductory texts amended 2746

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Chapter VII—Continued
855 Authority citation revised 38367
855.11 (q) added 38367

1995

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Chapter VII
806b Appendix C amended 36224
818a Removed 57934
855 Revised 37349
892 Removed 57934
989 Revised 4548

Chapter XVI
1636.8 (b) revised 13908
1690 Removed 15683

Chapter XX
2001 Revised 53492

1996

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Chapter VII
801 Removed 46379
806b Appendix C amended 2917
835 Removed 4351
837 Removed 43466
838 Removed 4351
843 Removed 4352
848 Removed 4352
856 Removed 45322
861.3 (d)(1) revised 17841
861.4 (g)(1) and (2) revised 17841
862 Removed 45323
865.0—865.8 (Subpart A) Revised 16047
909 Removed 45323
950 Removed 45323

Chapter XX
Chapter XX Heading revised 10854
2001 Authority citation revised 10854
2001 Appendix A added 108

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Chapter VII

806b Appendix C amended 17070
813 Removed 631
818b Removed 631
844 Removed 631

Chapter XIX

1900 Revised; interim 32481
1901 Revised; interim 32488
1907 Revised; interim 32494
1908 Added; interim 32495

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Chapter XIX—Continued

1909 Added; interim 32498

1998

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Chapter XXI

2101 Removed 25736