AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

# Subtitle A—Department of Defense (Continued)

# CHAPTER VII—DEPARTMENT OF THE AIR FORCE

SUBCHAPTER A—ADMINISTRATION


| *Part* | | *Page* |
|---|---|---|
| 800 | [Reserved] | |
| 806 | Air Force Freedom of Information Act program | 7 |
| 806b | Air Force Privacy Act program | 24 |
| 807 | Sale to the public | 41 |
| 809a | Enforcement of order at Air Force installations, control of civil disturbances, support of disaster relief operations, and special consideration for overseas areas | 42 |


SUBCHAPTER B—SALES AND SERVICES


| | | |
|---|---|---|
| 811 | Release, dissemination, and sale of visual information materials | 46 |
| 811a | Visual information documentation (VIDOC) program | 51 |
| 818 | Personal financial responsibility | 53 |


SUBCHAPTER C—PUBLIC RELATIONS [RESERVED]

SUBCHAPTER D—CLAIMS AND LITIGATION


| | | |
|---|---|---|
| 841 | Licensing government-owned inventions in the custody of the Department of the Air Force | 65 |
| 842 | Administrative claims | 70 |
| 845 | Counsel fees and other expenses in foreign tribunals | 114 |


SUBCHAPTER E—SECURITY [RESERVED]

SUBCHAPTER F—AIRCRAFT


| | | |
|---|---|---|
| 855 | Civil aircraft use of United States Air Force airfields | 118 |

| Part | | Page |
|---|---|---|
| 861 | Department of Defense commercial air carrier quality and safety review program | 142 |
| | SUBCHAPTER G—ORGANIZATION AND MISSION—GENERAL | |
| 865 | Personnel Review Boards | 151 |
| | SUBCHAPTER H [RESERVED] | |
| | SUBCHAPTER I—MILITARY PERSONNEL | |
| 881 | Determination of active military service and discharge for civilian or contractual groups | 178 |
| 884 | Making military personnel, employees, and dependents available to civilian authorities for trial | 180 |
| 887 | Issuing of certificates in lieu of lost or destroyed certificates of separation | 187 |
| 888–888g | [Reserved] | |
| | SUBCHAPTER J—CIVILIAN PERSONNEL [RESERVED] | |
| | SUBCHAPTER K—MILITARY TRAINING AND SCHOOLS | |
| 901 | Appointment to the United States Air Force Academy | 190 |
| 903 | Air Force Academy Preparatory School | 199 |
| | SUBCHAPTERS L–M [RESERVED] | |
| | SUBCHAPTER N—TERRITORIAL AND INSULAR REGULATIONS | |
| 935 | Wake Island Code | 204 |
| | SUBCHAPTER O—SPECIAL INVESTIGATION [RESERVED] | |
| | SUBCHAPTERS P–S [RESERVED] | |
| | SUBCHAPTER T—ENVIRONMENTAL PROTECTION | |
| 989 | Environmental impact analysis process (EIAP) | 219 |

# SUBCHAPTER A—ADMINISTRATION

## PART 800 [RESERVED]

## PART 806—AIR FORCE FREEDOM OF INFORMATION ACT PROGRAM


Sec.
806.0 Purpose.
806.1 General guidance.
806.2 Responsibilities.
806.3 Material not covered by the FOIA.
806.4 FOIA requests.
806.5 Submitting FOIA requests.
806.6 Processing requests under FOIA and Privacy Act (PA).
806.7 Describing records.
806.8 Creating a record.
806.9 Special disclosure procedures.
806.10 FOIA exemptions.
806.11 FOIA exclusions.
806.12 Denials.
806.13 Freedom of Information Act annual report.
806.14 Host-tenant relationship.
806.15 Processing FOIA requests.
806.16 Referrals.
806.17 Categorizing requesters.
806.18 Fee assessment.
806.19 Aggregating requests.
806.20 Fee waivers.
806.21 Transferring fees to accounting and finance offices.
806.22 Fee rates.
806.23 Technical data.
806.24 Technical data fee rates.
806.25 Appeals.
806.26 For Official Use Only (FOUO).
APPENDIX A TO PART 806—GLOSSARY OF TERMS
APPENDIX B TO PART 806—REQUIREMENTS OF 5 U.S.C. 552(B)(4)


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

### Subpart A–Overview of the Privacy Act Program

Sec.
806b.1 Basic guidelines.
806b.2 Violation penalties.
806b.3 Personal notes.
806b.4 Responsibilities.

### Subpart B–Obtaining Law Enforcement Records and Promises of Confidentiality

806b.5 Obtaining law enforcement records.
806b.6 Promising confidentiality.

### Subpart C–Collecting Personal Information

806b.7 How to collect personal information.
806b.8 When to give Privacy Act statements (PAS).
806b.9 Requesting the social security number (SSN).

### Subpart D–Giving Access to Privacy Act Records

806b.10 Making a request for access.
806b.11 Processing a request for access.
806b.12 Fees.
806b.13 Denying or limiting access.
806b.14 Denial authorities.

### Subpart E–Amending the Record

806b.15 Amendment reasons.
806b.16 Responding to amendment requests.
806b.17 Approving or denying a record amendment.
806b.18 Seeking review of unfavorable agency determinations.
806b.19 Appeal procedures.
806b.20 Contents of Privacy Act case files.

### Subpart F–Privacy Act Notifications

806b.21 When to include a Privacy Act warning statement in publications.
806b.22 Publishing system notices.
806b.23 Timing of notices.

### Subpart G–Protecting and Disposing of Records

806b.24 Protecting records.
806b.25 Balancing protection.
806b.26 Disposing of records.

### Subpart H–Privacy Act Exemptions

806b.27 Requesting an exemption.
806b.28 Exemption types.
806b.29 Authorizing exemptions.
806b.30 Approved exemptions.

### Subpart I–Disclosing Records to Third Parties

806b.31 Disclosure considerations.
806b.32 Disclosing information for which consent is not required.
806b.33 Disclosing other information.
806b.34 Agencies or individuals to whom the Air Force may release privacy information.
806b.35 Disclosing the medical records of minors.
806b.36 Disclosure accounting.
806b.37 Computer matching.

### Subpart J–Training

806b.38 Who needs training.
806b.39 Training tools.

### Subpart K–Privacy Act Reporting

806b.40 Privacy act report (RCS: DD–DA&M(A)1379).
APPENDIX A TO PART 806B—GLOSSARY OF REFERENCES, ABBREVIATIONS, ACRONYMS, AND TERMS
APPENDIX B TO PART 806B—PREPARING A SYSTEM NOTICE
APPENDIX C TO PART 806B—GENERAL AND SPECIFIC EXEMPTIONS

AUTHORITY: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

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.

---

[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 818—PERSONAL FINANCIAL RESPONSIBILITY

## Subpart A—General

Sec.
818.0 Purpose.
818.1 Air Force policy.
818.2 Explanation of terms.
818.3 Responsibilities.
818.4 Review of complaints.
818.5 Processing of complaints.
818.6 High-level inquiries (AFR 11–7, Air Force Relations with Congress).

## Subpart B—Personal Indebtedness

818.7 General policies.
818.8 General requirements for acceptance of complaints.
818.9 Dishonored checks and similar instruments.
818.10 Bankruptcy.
818.11 Involuntary deductions for personal indebtedness.

## Subpart C—Dependent Support

818.12 General policies.
818.13 Proof of support.
818.14 Basic Allowance for Quarters (BAQ).
818.15 Garnishment.
818.16 Statutory allotments.
818.17 Paternity claims.
818.18 Certificate of compliance.
818.19 Standards of fairness.
818.20 Garnishment of pay of Air Force members and employees only for child support or alimony obligations.
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

### Subpart A—General Information

Sec.
841.0 Purpose.
841.1 Air Force policy.
841.2 Execution of licenses.
841.3 Delegation of authority.
841.4 Definitions.
841.5 Royalties.

### Subpart B—Restrictions and Conditions for Licensing and Types of Licenses

841.6 Restrictions and conditions.
841.7 Nonexclusive licenses.
841.8 Exclusive and partially exclusive licenses.
841.9 Additional licenses.
841.10 Foreign licenses.

### Subpart C—Licensing Procedures

841.11 Publication requirements.
841.12 Request for a license.
841.13 Contents of a license application.
841.14 Published notices.
841.15 Determination to grant or deny exclusive or partially exclusive licenses.
841.16 Modification and termination.
841.17 Appeals.

### Subpart D—Transfer of Custody of Government Inventions and Confidentiality of Information

841.18 Transfer procedure.
841.19 Confidentiality of plans and reports.

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

Sec.
842.0 Scope.

Subpart A—General Information

842.1 Scope of this subpart.
842.2 Definitions.
842.3 Claims authorities.
842.4 Where to file a claim.
842.5 Claims forms.
842.6 Signature on the claim form.
842.7 Who may file a claim.
842.8 Insured claimants.
842.9 Splitting a claim.

Subpart B—Functions and Responsibilities

842.10 Scope of this subpart.
842.11 Air Force claims organization.
842.12 HQ USAF claims responsibility.
842.13 Staff Judge Advocates' responsibility.
842.14 Claims and assistant claims officers.

### Subpart C—Claims Under Article 139, Uniform Code of Military Justice (UCMJ) (10 U.S.C. 939)

842.15 Scope of this subpart.
842.16 Definitions.
842.17 Claims payable.
842.18 Claims not payable.
842.19 Limiting provisions.
842.20 Filing a claim.

### Subpart D—Personnel Claims (31 U.S.C. 3701, 3721)

842.21 Scope of this subpart.
842.22 Definitions.
842.23 Delegations of authority.
842.24 Filing a claim.
842.25 Partial payments.
842.26 Statute of limitations.
842.27 Who may file a claim.
842.28 Who are proper claimants.
842.29 Who are not proper claimants.
842.30 General provisions.
842.31 Claims payable.
842.32 Claims not payable.
842.33 Reconsideration of a claim.
842.34 Right of subrogation, indemnity, and contribution.
842.35 Depreciation and maximum allowances.

### Subpart E—Carrier Recovery Claims

842.36 Scope of this subpart.
842.37 Definitions.
842.38 Delegations of authority.
842.39 Statute of limitations.

### Subpart F—Military Claims Act (10 U.S.C. 2733)

842.40 Scope of this subpart.
842.41 Definitions.
842.42 Delegations of authority.
842.43 Filing a claim.
842.44 Advance payments.
842.45 Statute of limitations.
842.46 Who may file a claim.
842.47 Who are proper claimants.
842.48 Who are not proper claimants.
842.49 Claims payable.
842.50 Claims not payable.
842.51 Applicable law.
842.52 Appeal of final denials.
842.53 Right of subrogation, indemnity, and contribution.
842.54 Attorney fees.

### Subpart G—Foreign Claims (10 U.S.C. 2734)

842.55 Scope of this subpart.
842.56 Definitions.
842.57 Delegations of authority.
842.58 Filing a claim.
842.59 Advance payments.
842.60 Statute of limitations.
842.61 Who may file a claim.
842.62 Who are proper claimants.
842.63 Who are not proper claimants.
842.64 Payment criteria.
842.65 Claims not payable.
842.66 Applicable law.
842.67 Reconsideration of final denials.
842.68 Right of subrogation, indemnity, and contribution.

### Subpart H—International Agreement Claims (10 U.S.C. 2734a and 2734b)

842.69 Scope of this subpart.
842.70 Definitions.
842.71 Delegations of authority.
842.72 Filing a claim.

### Subpart I—Use of Government Property Claims (10 U.S.C. 2737)

842.73 Scope of this subpart.
842.74 Definitions.
842.75 Delegations of authority.
842.76 Filing a claim.
842.77 Statute of limitations.
842.78 Claims payable.
842.79 Claims not payable.
842.80 Reconsideration of final denial.
842.81 Settlement agreement.

### Subpart J—Admiralty Claims (10 U.S.C. 9801–9804, 9806; 46 U.S.C. 740)

842.82 Scope of this subpart.
842.83 Definitions.
842.84 Delegations of authority.
842.85 Reconsidering claims against the United States.

### Subpart K—Claims Under the Federal Tort Claims Act (28 U.S.C. 1346(b), 2402, 2671, 2672, 2674–2680)

842.86 Scope of this subpart.
842.87 Definitions.
842.88 Delegations of authority.
842.89 Statute of limitations.
842.90 Reconsideration of final denials.
842.91 Settlement agreements.

### Subpart L—Property Damage Tort Claims in Favor of the United States (31 U.S.C. 3701, 3711–3719)

842.92 Scope of this subpart.
842.93 Delegations of authority.
842.94 Assertable claims.
842.95 Non-assertable claims.
842.96 Asserting the claim.
842.97 Referring a claim to the US Attorney or the Department of Justice.
842.98 Statute of limitations.
842.99 Compromise, termination, and suspension of collection.

### Subpart M—Claims Under the National Guard Claims Act (32 U.S.C. 715)

842.100 Scope of this subpart.
842.101 Definitions.
842.102 Delegations of authority.
842.103 Filing a claim.
842.104 Advance payments.
842.105 Statute of limitations.
842.106 Who may file a claim.
842.107 Who are proper claimants.
842.108 Who are not proper claimants.
842.109 Claims payable.
842.110 Claims not payable.
842.111 Applicable law.
842.112 Appeal of final denials.
842.113 Government's right of subrogation, indemnity, and contribution.
842.114 Attorney fees.

### Subpart N—Hospital Recovery Claims (42 U.S.C. 2651–2653)

842.115 Scope of this subpart.
842.116 Definitions.
842.117 Delegations of authority.
842.118 Assertable claims.
842.119 Nonassertable claims.
842.120 Asserting the claim.
842.121 Referring a claim to the US Attorney.
842.122 Statute of limitations.
842.123 Recovery rates in government facilities.
842.124 Waiver and compromise of United States interest.
842.125 Reconsideration of a waiver for undue hardship.

### Subpart O—Nonappropriated Fund Claims

842.126 Scope of this subpart.
842.127 Definitions.
842.128 Delegations of authority.
842.129 Settlement of claims against NAFIs.
842.130 Payment of claims against NAFIs.
842.131 Tort and tort type claims.
842.132 Claims by NAFI employees.
842.133 Claims by customers, members, participants, or authorized users.
842.134 Claims in favor of NAFIs.
842.135 Advance payments.
842.136 Claim payments and deposits.

### Subpart P—Civil Air Patrol Claims (5 U.S.C. 8101(1)(B), 8102(a), 8116(c), 8141; 10 U.S.C. 9441, 9442; 36 U.S.C. 201–208)

842.137 Scope of this subpart.
842.138 Definitions.
842.139 Delegations of authority.
842.140 Proper claimants.
842.141 Improper claimants.
842.142 Claims payable.
842.143 Claims not payable.

### Subpart Q—Advance Payments (10 U.S.C. 2736)

842.144 Scope of this subpart.
842.145 Delegation of authority.
842.146 Who may request.
842.147 When authorized.
842.148 When not authorized.
842.149 Separate advance payment claims.
842.150 Liability for repayment.

AUTHORITY: Sec. 8013, 100 Stat. 1053, as amended; 10 U.S.C. 8013, except as otherwise noted.

SOURCE: 55 FR 2809, Jan. 29, 1990, unless otherwise noted.

NOTE: Air Force Regulations are available through the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

This part is derived from Air Force Regulation 112–1, Claims and Tort Litigation.

### § 842.0 Scope.

This part establishes standard policies and procedures for administratively processing claims resulting from Air Force activities and for which the Air Force has assigned responsibility; tells how to present, process, and settle claims.

## Subpart A—General Information

### § 842.1 Scope of this subpart.

This subpart explains terms used in this part. It states basic Air Force claims policy and identifies proper claimants.

### § 842.2 Definitions.

(a) *Authorized agent.* Any person or corporation, including a legal representative, empowered to act on a claimant's behalf.

(b) *Civilian personnel.* Civilian employees of the Air Force who are paid from appropriated or nonappropriated funds. They include prisoners of war, interned enemy aliens performing paid labor, and volunteer workers except for claims under the Military Personnel and Civilian Employees' Claims Act.

(c) *Claim.* Any signed written demand made on or by the Air Force for the payment of a sum certain. It does not include any obligations incurred in the regular procurement of services, supplies, equipment, or real estate. An oral demand made under Article 139,

Uniform Code of Military Justice (UCMJ) is sufficient.

(d) *Claimant*. An individual, partnership, association, corporation, country, state, territory, or its political subdivisions, and the District of Columbia. The US Government or any of its instrumentalities may be a claimant in admiralty, tort, carrier recovery and hospital recovery claims in favor of the United States.

(e) *Geographic area of claims responsibility*. The base Staff Judge Advocate's (SJA's) jurisdiction for claims. CONUS jurisdictional areas are designated by HQ USAF/JACC on maps distributed to the field. HQ PACAF, HQ USAFE, and HQ 9AF SJAs designate these areas within their jurisdictions. DOD assigns areas of single service responsibility to each military department.

(f) *HQ USAF/JACC*. Claims and Tort Litigation Staff, Office of The Judge Advocate General, Headquarters, United States Air Force, Building 5683, Bolling AFB, DC 20332–6128.

(g) *HQ 9AF*. Headquarters Ninth Air Force, Shaw AFB, SC 29152–5002.

(h) *Owner*. A holder of a legal title or an equitable interest in certain property. Specific examples include:

(1) *For real property*. The mortgagor, and the mortgagee if that individual can maintain a cause of action in the local courts involving a tort to that specific property.

(2) *For personal property*. A bailee, lessee, mortgagee and a conditional vendee. A mortgagor, conditional vendor, or someone else other than the owner, who has the title for purposes of security are not owners.

(i) *HQ PACAF*. Headquarters, Pacific Air Forces, Hickam AFB, HI 96853–5001.

(j) *Personal injury*. The term ''personal injury'' includes both bodily injury and death.

(k) *Property damage*. Damage to, loss of, or destruction of real or personal property.

(l) *Settle*. To consider and pay, or deny a claim in full or in part.

(m) *Single Base General Court-Martial Jurisdiction (GCM)*. For claims purposes, a base legal office serving the commander who exercises GCM authority over that base, or that base and other bases.

(n) *Subrogation*. The act of assuming the legal rights of another after paying a claim or debt, for example, an insurance company (subrogee) paying its insured's (subrogor's) claim, thereby assuming the insured's right of recovery.

(o) *HQ USAFE*. Headquarters, United States Air Forces in Europe, Ramstein Air Base, Germany, APO NY 09012–5001.

[55 FR 2809, Jan. 29, 1990, as amended at 56 FR 1574, Jan. 16, 1991]

### §842.3 Claims authorities.

(a) *Appellate authority*. The individual authorized to review the final decision of a settlement authority upon appeal or reconsideration.

(b) *Settlement authority*. The individual or foreign claims commission authorized to settle a claim upon its initial presentation.

### §842.4 Where to file a claim.

File a claim at the base legal office of the unit or installation at or nearest to where the accident or incident occurred. If the accident or incident occurred in a foreign country where no Air Force unit is located, file the claim with the Defense Attache (DATT) or Military Assistance Advisory Group (MAAG) personnel authorized to receive claims (DIAM 100–1 and AFR 400–45). In a foreign country where a claimant is unable to obtain adequate assistance in filing a claim, the claimant may contact the nearest Air Force SJA. The SJA then advises HQ USAF/JACC thorugh claims channels of action taken and states why the DATT or MAAG was unable to adequately assist the claimant.

### §842.5 Claims forms.

Any signed written demand on the Air Force for a sum certain is sufficient to file a claim. The claimant should use these forms when filing a claim:

(a) *Claim processed under the Military Personnel and Civilian Employees' Claims Act*. Use AF Form 180, Claim For Loss of or Damage To Personal Property Incident To Service, or DD Forms 1842, Claim for Personal Property Against the United States, and 1844, Schedule of Property and Claim Analysis Chart, to file the claim.

(b) *Claim processed under international agreements.* Use any form specified by the host country.

(c) *Any other type claim.* Use SF 95, Claim for Damage, Injury, or Death.

### § 842.6 Signature on the claim form.

The claimant or authorized agent signs the claim form in ink using the first name, middle initial, and last name.

(a) *Claim filed by an individual.* (1) A married woman signs her name, for example, Mary A. Doe, rather than Mrs. John Doe.

(2) An authorized agent signing for a claimant shows, after the signature, the title or capacity and attaches evidence of authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative; for example, John Doe by Richard Roe, Attorney in Fact. A copy of a current and valid power of attorney, court order, or other legal document is sufficient evidence of the agent's authority.

(b) *Claim with joint interest.* Where a joint ownership or interest in real property exists, all joint owners must sign the claim form. This includes a husband and wife signing a claim if the claim is for property damage. However, only the military member or civilian employee signs the claim form for a claim under the Military Personnel and Civilian Employees' Claims Act.

(c) *Claim filed by a corporation.* (1) A corporate officer signing the form must show title or capacity and affix the corporate seal (if any) to the claim form.

(2) If the person signing the claim is other than the corporate officer they must:

(i) Attach to the claim form a certification by a proper corporate officer that the individual is an agent of the corporation duly authorized to file and settle the claim;

(ii) Affix to the claim form the corporate seal (if any) to the certification.

(d) *Claim filed by a partnership.* A partner must sign the form showing his or her title as partner and list the full name of the partnership.

### § 842.7 Who may file a claim.

(a) *Property damage.* The owner or owners of the property or their authorized agent may file a claim for property damage.

(b) *Personal injury or death.* (1) The injured person or authorized agent may file a claim for personal injury.

(2) The duly appointed guardian of a minor child or any other person legally entitled to do so under applicable local law may file a claim for a minor's personal injury.

(3) The executor or administrator of the decedent's estate or any other person legally entitled to do so under applicable local law may file a claim based on an individual's death.

(c) *Subrogation.* The subrogor (insured) and the subrogee (insurer) may file a claim jointly or individually. Pay a fully subrogated claim only to the subrogee. A joint claim must be asserted in the names of and signed by the real parties in interest. Make payment by sending a joint check to the subrogee, made payable to the subroger and subrogee. If separate claims are filed, make payment by check issued to each claimant to the extent of each undisputed interest.

### § 842.8 Insured claimants.

Insured claimants must make a detailed disclosure of their insurance coverage by stating:

(a) Their name and address.

(b) Kind, amount, and dates of coverage of insurance.

(c) Insurance policy number.

(d) Whether a claim was presented to the insurer and, if so, in what amount.

(e) Whether the insurer paid or is expected to pay the claim.

(f) The amount of any payment made or promised.

### § 842.9 Splitting a claim.

(a) A claim includes all damages accruing to a claimant by reason of an accident or incident. For example, when the same claimant has a claim for property damage and personal injury arising out of the same incident, each claim represents only a part of a single claim or cause of action. Even if local law permits filing a separate

claim for property damage and for personal injury, do not settle or pay a separate or split claim without the advance approval of HQ USAF/JACC.

(b) Filing for an advance payment, and subsequently filing a claim, does not constitute splitting a claim.

(c) Process the claim of a subrogor (insured) and subrogee (insurer) for damages arising out of the same incident as a single claim where permitted. If either claim or the combined claim exceeds, or is expected to exceed, settlement limits, send it to the next higher settlement authority. Do not split subrogated claims to avoid settlement limits.

## Subpart B—Functions and Responsibilities

### §842.10 Scope of this subpart.

It sets out the claims organization within the US Air Force and describes the functions and responsibilities of the various claims offices.

### §842.11 Air Force claims organization.

Air Force claims channels are:

(a) Continental United States (CONUS), Azores, Panama and Iceland:

(1) Headquarters US Air Force (HQ USAF).

(2) SJAs of bases, single base GCM authorities, stations and fixed installations, and commanders responsible for investigation and settlement of claims.

(b) Pacific Air Forces (PACAF) and US Air Forces, Europe (USAFE):

(1) HQ USAF.

(2) SJAs of PACAF and USAFE.

(3) SJAs of organizations exercising GCM authority.

(4) SJAs of bases, stations and fixed installations, and commanders responsible for investigating and settling claims.

(c) US Central Command (CENTCOM):

(1) HQ USAF.

(2) SJA of Headquarters Ninth Air Force (HQ 9AF).

(3) SJAs of bases, stations, and fixed installations, and commanders responsible for investigation and settlement of claims.

(d) *Maneuver and disaster claims.* Air Force Judge Advocates designated by The Judge Advocate General (TJAG) to process maneuver and disaster claims. Once appointed, judge advocates must process claims through claims channels.

[55 FR 2809, Jan. 29, 1990, as amended at 56 FR 1574, Jan. 16, 1991]

### §842.12 HQ USAF claims responsibility.

(a) *TJAG, through the Claims and Tort Litigation Staff (HQ USAF/JACC):* (1) Establishes claims and tort litigation policies and supervises and assists all Air Force claims activities.

(2) Trains claims officers and paralegals.

(3) Settles certain claims.

NOTE: The authority specifically delegated to the Deputy Judge Advocate General to settle certain claims in no way limits the Deputy's authority to perform the duties of TJAG when so acting pursuant to 10 U.S.C. 8072.

(4) Monitors tort litigation for and against the United States arising out of Air Force activities.

(b) *HQ USAF/JACC.* (1) Supervises and inspects claims and tort litigation activities through assistance visits, special audits, and Claims Administrative Management Program (CAMP) reviews.

(2) Implements claims and tort litigation policies, issues instructions, and provides guidance and assistance to subordinate claims offices.

(3) Recommends settlement action on claims and tort litigation to TJAG, the Secretary of the Air Force, and the United States Attorney General.

(4) Maintains liaison with the Department of Defense (DOD), Department of Justice (DOJ), and other government agencies on claims and tort litigation.

(5) Settles certain claims.

(6) Certifies or reports claims to the General Accounting Office (GAO).

(7) Prepares budget estimates for Air Force claims activities.

(8) Monitors the collection, allocation, and expenditure of Air Force claims funds.

(9) Keeps permanent records on all claims and tort litigation for which TJAG is responsible.

(10) Conducts and supervises claims training activities.

**§ 842.13 Staff Judge Advocates' responsibility.**

(a) *Major Command (MAJCOM).* (1) All MAJCOM SJAs, whether or not exercising claims settlement authority are responsible for the general supervision of claims activities within their commands, including:

(i) Conduct of periodic claims audits.

(ii) Support of claims teams. Members may be detailed from personnel assigned to the command to respond to natural disasters or serious incidents. If resources are not available from within the command, HQ USAF/JACC should be contacted for assistance.

(iii) Apportion claims funds allocated by HQ USAF.

(2) The PACAF, USAFE, and HQ 9AF SJA:

(i) Settles claims.

(ii) At a minimum, through assistance visits and audits, supervises claims activities of those subordinate units and organizations assigned to them for claims purposes.

(iii) Appoints members to foreign claims commissions.

(iv) Monitors international claims.

(v) Establishes and designates geographic areas of claims responsibility within the command, except for DOD designated single-service areas of responsibility.

(b) *GCM:* (1) The GCM SJA, whether or not he or she exercises claims settlement authority, is responsible for the general supervision of claims activities within the subordinate units.

(2) The GCM SJA exercising settlement authority:

(i) Settles certain claims.

(ii) Supervises directly the claims activities of their subordinate units. This includes at least assistance visits and audits for all but single base GCMs.

(c) *Base SJAs:* (1) Settle certain claims.

(2) Have primary investigative responsibility for incidents giving rise to claims that occur in their geographic area of responsibility.

(3) Notify HQ USAF/JACC through claims channels, if there is a question of which base can best investigate and process a particular claim.

**§ 842.14 Claims and assistant claims officers.**

(a) *Functions and responsibilities:* (1) The claims officer, under the immediate supervision of the SJA, the commander, or other appointing authority, is responsible for all claims activity of the command, organization, or unit. This includes investigating and reporting accidents, incidents, and claims.

(2) The assistant claims officer performs claims duties under the supervision of the claims officer and in the absence of the claims officer.

(b) *Appointment of claims and assistant claims officers:* (1) The Commander of each Air Force base, station, fixed installation, or separate unit appoints a claims officer in writing.

(2) The SJA appoints assistant claims officers in writing.

(c) *Qualifications of claims officers:* Claims officers are commissioned officers, designated as judge advocates of the Air Force, or civilian attorneys employed by the United States in authorized attorney positions at the office of the SJA.

(d) *Qualifications of assistant claims officers:* The assistant claims officer may be an attorney, a senior noncommissioned officer (E–7 through E–9), or a Department of the Air Force civilian employee (GS–7 or above).

## Subpart C—Claims Under Article 139, Uniform Code of Military Justice (UCMJ) (10 U.S.C. 939)

**§ 842.15 Scope of this subpart.**

It sets out the Air Force procedures for processing Article 139, UCMJ claims.

**§ 842.16 Definitions.**

(a) *Appointing commander.* The commander exercising special court-martial jurisdiction over the offender is the appointing commander.

(b) *Board of officers.* One to three commissioned officers appointed to investigate a complaint of willful property damage or wrongful taking by Air Force personnel comprise a board of officers.

(c) *Property.* Property is an item that is owned or possessed by an individual

or business. Property includes a tangible item such as clothing, household furnishings, motor vehicles, real property, and currency. The term does not include intangible property or items having no independent monetary worth. Items that should not be considered as property for the purpose of this part include a stock, bond, check, check book, credit card, telephone service and cable television services.

(d) *Willful damage.* Damage or destruction caused intentionally, knowingly, and purposely, without justifiable excuse is willful damage.

(e) *Wrongful taking.* Any unauthorized taking or withholding of property with intent to deprive the owner or person in lawful possession either temporarily or permanently.

### §842.17 Claims payable.

Claims for property willfully damaged or wrongfully taken by Air Force military personnel as a result of riotous, violent, or disorderly conduct. If a claim is payable under this part and also under another part, it may be paid under this part if authorized by HQ USAF/JACC.

### §842.18 Claims not payable.

Claims that are not payable are:

(a) Claims resulting from simple negligence.

(b) Claims for personal injury or death.

(c) Claims resulting from acts or omissions of Air Force military personnel while acting within the scope of their duty.

(d) Claims of subrogees.

(e) Claims arising from private indebtedness.

(f) Claims for reimbursement for bad checks.

### §842.19 Limiting provisions.

(a) Submit a complaint within 90 days of the date of the incident unless the appointing commander finds good cause for the delay. Command determination of the absence of good cause is final.

(b) Assessment of damages in excess of $5,000 against an offender's pay for a single incident requires HQ USAF/JACC approval.

(c) Payment of indirect, remote, or consequential damages is not authorized.

### §842.20 Filing a claim.

Claimant complains (orally or in writing) to the commander of a military organization or unit of the alleged offending member or members or to the commander of the nearest military installation. However, the complainant need not request a sum certain in writing, before settlement is made.

## Subpart D—Personnel Claims (31 U.S.C. 3701, 3721)

### §842.21 Scope of this subpart.

It explains how to settle and pay claims under the Military Personnel and Civilian Employees' Claims Act for incident to service loss and damage of personal property. These claims are paid according to this subpart even when another subpart may also apply.

### §842.22 Definitions.

(a) *Act of God.* An act occasioned exclusively by violence of nature, such as flood, earthquake, tornado, typhoon or hurricane, that is unanticipated and over which no one has any control.

(b) *Military installation.* A facility used to serve a military purpose and used or controlled by the Air Force or any other Department of Defense (DOD) element.

(c) *Other authorized places:* (1) Any place authorized, or apparently authorized by the government to receive, hold, or store personal property, such as offices, warehouses, baggage holding areas, hospitals.

(2) Any area on a military installation designated for parking or storing vehicles.

(3) A recreation area or any real estate the Air Force or any other DOD element uses or controls.

(d) *Personal property.* Tangible property an individual owns, including but not limited to household goods, unaccompanied baggage, privately owned vehicles (POV), and mobile homes.

(e) *Quarters:* (1) Housing the government assigns or otherwise provides in kind to the claimant, including substandard housing and trailers, when the claimant pays the government a

fixed rental while drawing basic allowance for quarters (BAQ).

(2) Privately owned mobile or manufactured homes parked on base in spaces the government provides.

(3) Transient housing accommodations, wherever located, such as, hotels, motels, guest houses, transient dormitories, or other lodgings the government furnishes or contracts for.

(4) Housing accommodations outside the United States which the claimant occupies according to local policies and procedures which were not assigned by or otherwise provided for by the U.S. Government. Quarters do not include housing occupied by foreign indigenous employees.

(5) Garages, carports, driveways, and parking lots assigned to quarters the government provides for the occupants of the quarters to use.

(6) Street parking:

(i) At quarters.

(ii) In the immediate vicinity of quarters.

(iii) Reserved parking assigned to offbase housing accommodations overseas.

(7) The area immediately adjacent to quarters when used for storage of items not commonly stored in living areas, for example, boats, motorcycles, motorbikes, bicycles, lawn mowers, garden equipment, and outdoor furniture.

(f) *Reconsideration.* The original or a higher settlement authority's review of a prior settlement action.

(g) *Small claim.* A claim for $1,000 or less.

(h) *Unusual Occurrence.* Something not expected to happen in the normal course of events.

### § 842.23 Delegations of authority.

(a) *Settlement authority:* (1) These individuals have been delegated the authority to settle claims payable for $25,000 or less if the claim arose before 31 October 1988, or $40,000 or less if the claim arose on or after 31 October 1988, and to deny claims in any amount:

(i) The Judge Advocate General (TJAG).

(ii) The Deputy Judge Advocate General.

(iii) The Director of Civil Law.

(iv) The Chief, Deputy Chief, and Branch Chiefs, Claims and Tort Litigation Staff.

(2) The SJAs of HQ USAFE, HQ PACAF, and 9 AF (for claims arising out of HQ CENTCOM) have delegated authority to settle claims payable, and to deny claims filed for $25,000 or less.

(3) The SJAs of single base GCMs and the SJAs of GCMs within PACAF and USAFE have delegated authority to settle claims payable, and to deny claims filed for $15,000 or less.

(4) SJAs of each Air Force Base, station, and fixed installation have been delegated the authority to settle claims payable, and deny claims filed for $10,000 or less.

(b) *Redelegation of authority.* A settlement authority may redelegate the authority, in writing, to a subordinate judge advocate or civilian attorney.

(c) *Reconsideration authority.* A settlement authority has the same authority specified in a above. However, with the exception of TJAG, a settlement authority may not deny a claim on reconsideration that it, or its delegate, had previously denied.

(d) *Authority to reduce, withdraw, and restore settlement authority.* Any superior settlement authority may reduce, withdraw, or restore delegated authority.

[55 FR 2809, Jan. 29, 1990, as amended at 56 FR 1574, Jan. 16, 1991]

### § 842.24 Filing a claim.

(a) *How and when to file a claim.* A claim is filed when a federal military agency receives from a claimant or duly authorized agent a properly completed AF Form 180, DD Form 1842 or other written and signed demand for a specified sum of money.

(b) *Amending a claim.* A claimant may amend a claim at any time prior to the expiration of the statute of limitations by submitting a signed amendment. The settlement authority adjudicates and settles or forwards the amended claim as appropriate.

(c) *Separate claims.* The claimant files a separate claim for each incident which caused a loss. For transportation claims, this means a separate claim for each shipment.

### §842.25 Partial payments.

Upon request of a claimant, a settlement authority may make a partial payment in advance of final settlement when a claimant experiences personal hardship due to extensive property damage or loss. Examples where partial payments are appropriate include fires and sunken transport ships. Partial payments are made in this manner:

(a) If a claim for only part of the loss is submitted and is readily provable, pay it up to the amount of the settlement authority. (The claimant may later amend the claim for the remainder of the loss.) If the total payable amount of the claim exceeds the payment limits of the settlement authority, send it with recommendations through claims channels to the proper settlement authority.

(b) When the total claim is submitted and the amount payable exceeds the settlement authority, pay a partial payment within the limits of settlement authority and send the claim, with recommendations, through claims channels to the proper settlement authority.

### §842.26 Statute of limitations.

(a) The claimant must file the claim in writing within 2 years after it accrues. It accrues when the claimant discovered or reasonably should have discovered the full extent of the property damage or loss. For transportation losses, the claim usually accrues on the date of delivery.

(b) To compute the statutory period, the incident date is excluded and the day the claim was filed is included.

(c) Consider a claim filed after the statute has run if both of the following are present:

(1) The United States is at war or in an armed conflict when the claim accrues, or the United States enters a war or armed conflict after the claim accrues. Congress or the President establishes the beginning and end of war or armed conflict. A claimant may not file a claim more than 2 years after the war or armed conflict ends.

(2) Good cause is shown. A claimant may not file a claim more than 2 years after the good cause ceases to exist.

### §842.27 Who may file a claim.

A claim may be filed by the:

(a) Property owner.

(b) Authorized agent with a power of attorney.

(c) Property owner's survivors, who may file in this order:

(1) Spouse.

(2) Children.

(3) Father or mother, or both.

(4) Brothers or sisters, or both.

### §842.28 Who are proper claimants.

Proper claimants are:

(a) Active duty Air Force military personnel.

(b) Civilian employees of the Air Force who are paid from appropriated funds.

(c) DOD school teachers and school administrative personnel who are provided logistic and administrative support by an Air Force installation commander.

(d) Air Force Reserve (AFRES) and Air National Guard (ANG) personnel when performing active duty, full-time National Guard duty, or inactive duty training, ANG technicians under 32 U.S.C. 709.

(e) Retired or separated Air Force military personnel who suffer damage or loss resulting from the last storage or movement of personal property, or for claims accruing before retirement or separation.

(f) AFROTC cadets while on active duty for summer training.

(g) United States Air Force Academy cadets.

### §842.29 Who are not proper claimants.

The following individuals are not proper claimants:

(a) Subrogees and assignees of proper claimants, including insurance companies.

(b) Conditional vendors and lienholders.

(c) Non-Air Force personnel, including American Red Cross personnel, United Services Organization (USO) performers, employees of government contractors, and Civil Air Patrol (CAP) members.

(d) AFROTC cadets who are not on active duty for summer training.

(e) Active duty military personnel and civilian employees of a military service other than the Air Force.

(f) DOD employees who are not assigned to the Air Force.

(g) Army and Air Force Exchange Service (AAFES) employees and other employees whose salaries are paid from nonappropriated funds (see subpart O).

(h) Military personnel of foreign governments.

### § 842.30 General provisions.

Payable claims must be for:

(a) Personal property which is reasonable or useful under the circumstances of military service.

(b) Loss, damage, destruction, confiscation, or forced abandonment which is incident to service.

(c) Losses that are not collectable from any other source, including insurance and carriers.

(d) Property that is owned by the claimants, their immediate families, or borrowed for their use.

(e) Losses occurring without the claimants' negligence.

### § 842.31 Claims payable.

Claims may be paid for:

(a) *Transportation or storage loss:* (1) Pay for property damage or loss incident to:

(i) Transportation under orders, whether it was in the possession of the government, carrier, storage warehouse, or other government contractor. This includes Do-It-Yourself (DITY) moves.

(ii) Travel under orders, including temporary duty (TDY).

(iii) Travel on a space available basis on a military aircraft, vessel, or vehicle.

(2) Pay for property essential to everyday use, if the claimant has replaced the items that he or she reported as missing. Essential items may be paid for even if someone locates the property before the claimant files the claim.

(b) *Losses at quarters and other authorized places*—(1) *In the United States (including U.S. territories and possessions).* Pay for personal property damage or loss, to include food spoilage, which is caused by fire, explosion, theft, vandalism, typhoon, hurricane, unusual occurrences or power outages which last for an extended period of time. The claimant must be free of negligence.

(i) Claims for damage or loss caused by other acts of god are not paid except in those instances where the geographic area has been declared to be a federal disaster area or HQ USAF/JACC has determined that payment is appropriate because the severity of the act of god was truly extraordinary.

(ii) In some areas, extreme weather, such as severe lightning storms, hail, or high winds, occur routinely. Damage claims from these storms are normally not paid. Failure to take reasonable care in protecting property from such known hazards may be negligence. These types of claims would include pitted windshields, dents, chipped paint on vehicles, and lightning damage to television sets, stereos, computer components, video recorders, and other electrical appliances.

(2) *Outside the United States.* Pay for personal property damage or loss, to include food spoilage, which is caused by fire, explosion, theft, vandalism, acts of god, unusual occurrences, or power outages which last for an extended period of time. The claimant must be free of negligence. The SJA must make an affirmative determination that the act of god or unusual occurrence was truly extraordinary.

(c) *Privately owned vehicles (POV).* Pay for damage to or loss of POVs caused by government negligence under subpart F or K. Pay under this subpart for damage or loss incident to:

(1) Theft of POVs or their contents, or vandalism to parked POVs:

(i) Anywhere on a military installation.

(ii) At offbase quarters overseas.

(iii) At other authorized places.

(2) Government shipment:

(i) To or from oversea areas incident to PCS.

(ii) On a space available reimbursable basis.

(iii) As a replacement vehicle under the provisions of the Joint Travel Regulations (JTR).

(3) Authorized use for government duty other than PCS moves. The owner must have specific advance permission of the appropriate supervisor or official. Adequate proof of the permission

and of nonavailability of official transportation must be provided prior to paying such claims. Claims arising while the claimant is deviating from the principal route or purpose of the trip should not be paid, but claims occurring after the claimant returns to the route or purpose should be paid. Travel between quarters and place of duty, including parking, is not authorized use for government duty.

(4) Paint spray, smokestack emission, and other similar operations by the Air Force on a military installation caused by a contractor's negligence. (Process the claim under subpart F or K, if government negligence causes such losses.) If a contractor's operation caused the damage:

(i) Refer the claim first to the contractor for settlement.

(ii) Settle the claim under this subpart if the contractor does not pay it or excessively delays payment, and assert a claim against the contractor.

(d) *Damage to mobile or manufactured homes and contents in shipment.* Pay such claims if there is no evidence of structural or mechanical failure for which the manufacturer is responsible.

(e) *Borrowed property.* Pay for loss or damage to property claimants borrow for their use. Either the borrower or lender, if proper claimants, may file a claim. Do not pay for property borrowed to accommodate the lender, i.e., such as to avoid weight or baggage restrictions in travel.

(f) *Marine or aircraft incident.* Pay claims of crewmembers and passengers who are in duty or leave status at the time of the incident. Payable items include jettisoned baggage, clothing worn at the time of an incident, and reasonable amounts of money, jewelry, and other personal items.

(g) *Combat losses.* Pay for personal property losses, whether or not the United States was involved, due to:

(1) Enemy action.

(2) Action to prevent capture and confiscation.

(3) Combat activities.

(h) *Civil activity losses.* Pay for losses resulting from a claimant's acts to:

(1) Quell a civil disturbance.

(2) Assist during a public disaster.

(3) Save human life.

(4) Save government property.

(i) *Confiscated property.* Pay for losses when:

(1) A foreign government unjustly confiscates property.

(2) An unjust change or application of foreign law forces surrender or abandonmnet of property.

(j) *Clothing and accessories worn on the person.* Pay claims for damage to eyeglasses, hearing aids, and dentures the government did not supply, when the damage results from actions beyond the normal risks associated with daily living and working. Claimants assume the risk of normal wear and tear, and their negligence bars payment of the claim.

(k) *Money losses.* Pay claims for loss of money when the losses are due to theft from quarters, other authorized places, or from the person, if the claimant was required to be in the area and could not avoid the theft by due care. As a general rule, $200.00 is reasonable to have in quarters, and $100.00 is reasonable to have on the person unless:

(1) The money was in a bona fide coin collection.

(2) The claimant can justify possession of the money for a PCS move, extended TDY, vacation, extensive shopping trip, or similar circumstances. The claimant must show a good reason why the money had not been deposited in a bank or converted into travelers checks or a money order.

(3) Local commercial facilities are not available or because US personnel do not generally use such facilities.

### §842.32 Claims not payable.

A claim is not payable if:

(a) It is not incident to the claimant's service.

(b) The loss or damage is caused in whole or in part by the negligence or wrongful act of the claimant, the claimant's spouse, agent, or employee.

(c) It is a subrogation or assigned claim.

(d) The loss is recovered or recoverable from an insurer or other source. When a loss is recovered or is recoverable:

(1) The amount payable by insurance should be deducted if an insurer denied a claim because a claimant failed to report the loss or to file a timely claim under the policy. The claim should be

paid if the settlement authority determines the claimant had good cause for not filing with the insurer, or

(2) The amount which the Air Force cannot recover from a carrier because the claimant failed to give timely notice of loss or damage should be subtracted from the settlement unless the claimant shows good cause for failure to give notice.

(e) It is intangible property including bank books, promissory notes, stock certificates, bonds, baggage checks, insurance policies, checks, money orders, travelers checks and credit cards.

(f) It is government property, including issued clothing items carried on an individual issue supply account. (Clothing not carried on an individual issue supply account which is stolen or clothing lost or damaged in transit may be considered as a payable item when claimed.)

(g) It is enemy property.

(h) It is a loss within the United States at offbase quarters the government did not provide.

(i) It is damage to real property.

(j) It is an appraisal fee, unless the settlement authority requires one to adjudicate the claim. HQ USAF/JACC must authorize payment for an appraisal fee of more than $100.

(k) It is property acquired or shipped for persons other than the claimant or the claimant's immediate family; however, a claim for property acquired for bona fide gifts may be paid.

(l) It is an article held for sale, resale, or used primarily in a private business.

(m) It is an item acquired, possessed, shipped, or stored in violation of any U.S. Armed Force directive or regulation. This includes an automobile for which a member fails to comply with base registration or insurance regulations. A claim must not be paid if one or more of these factors exist:

(1) The loss was the type the regulation or directive intended to prevent.

(2) The violation was willful or in defiance of authority, rather than minor or technical in nature.

(3) The violation either undermined discipline or adversely affected command welfare.

(n) It is an item fraudulently claimed. Deny payment for an item when investigation shows the claimant has intentionally falsified the value, condition, extent of damage, or repair cost of it. The claim file must show clear intent to defraud. A mere mistake is not a fraud.

(o) It is for charges for labor performed by the owner or immediate family member.

(p) It is for financial loss due to changed or cancelled orders.

(q) It is for expenses of enroute repair of a mobile or manufactured home.

(r) It is a loss of use of personal property.

(s) It is an attorney or agent fee.

(t) It is the cost of preparing a claim, other than estimate fees.

(u) It is an inconvenience expense, such as food, lodging, and transportation costs due to delay in delivery of household goods or travel to port to deliver or pick up a vehicle.

(v) It is a loss of, or damage to POV driven during PCS.

(w) It is a personal property insurance premium.

(x) It is a claim for a thesis or other similar papers, except for the cost of materials.

(y) It is damage to, or loss of a rental vehicle which TDY or PCS orders authorized. These claims may be payable through Accounting and Finance as a travel expense.

(z) It is a cost to relocate a telephone or mobile or manufactured home due to a government ordered quarters move. The member submits such claims to the commander directing the move for payment from other Operation and Maintenance (O&M) funds.

(aa) It is for damage to or loss of property stored at the owner's expense unless the claimant's duty made storage necessary.

(bb) It is for damage to clothing and accessories caused by routine wrinkles.

(cc) It is hit-and-run damage to POVs.

(dd) It is for damage to clothing and accessories caused by contact with office furniture or getting in or out of a government vehicle unless the damage was caused by an unknown defect.

### § 842.33 Reconsideration of a claim.

A claimant may request reconsideration of an initial settlement or denial

of a claim. The claimant sends the request in writing, to the settlement authority within a reasonable time following the initial settlement or denial. Sixty days is considered a reasonable time, but the settlement authority may waive the time limit for good cause.

(a) The original settlement authority reviews the reconsideration request. The settlement authority sends the entire claim file with recommendations and supporting rationale to the next higher settlement authority if all relief the claimant requests is not granted.

(b) The decision of the higher settlement authority is the final administrative action on the claim.

### §842.34 Right of subrogation, indemnity, and contribution.

The Air Force becomes subrogated to the rights of the claimant upon settling a claim. The Air Force has the rights of contribution and indemnity permitted by the law of the situs or under contract. The Air Force does not seek contribution or indemnity from US military personnel or civilian employees whose conduct in scope of employment gave rise to government liability.

### §842.35 Depreciation and maximum allowances.

The military services have jointly established the ''Allowance List-Depreciation Guide'' to determine values for most items and to limit payment for some categories of items.

## Subpart E—Carrier Recovery Claims

### §842.36 Scope of this subpart.

This subpart explains how to assert and settle claims against carriers, warehousemen, and contractors for loss and damage to personal property.

### §842.37 Definitions.

(a) *Bill of lading.* A contract for movement and delivery of goods.

(1) Carriers issue commercial bills of lading.

(2) Transportation officers issue government bills of lading (GBL). GBLs include the terms and conditions of commercial bills of lading with certain exceptions.

(3) The GBL is all of the following:

(i) A receipt for goods tendered to a carrier.

(ii) A contract.

(iii) A document authorizing collection of transportation bills the carrier presents.

(b) *Carrier.* Any moving company, personal property forwarder, or freight forwarder holding a certificate or permit issued by a federal or state regulatory agency or approved by the Department of Defense for international shipments.

(c) *Military Traffic Management Command (MTMC).* The Department of Defense management agency for military traffic, land transportation, and common user ocean terminals. Among other responsibilities, MTMC manages the DOD household goods moving and storage program worldwide. The Army has single service responsibility for MTMC.

(d) *Regional Storage Management Office (RSMO).* The MTMC office responsible for negotiating and administering all storage contracts within a geographical area. The contracting officer of each RSMO makes involuntary collections of nontemporary storage loss and damage claims.

(e) *Net weight.* The weight of the fully-loaded van or shipping crate (gross weight), less the weight of the empty van or shipping crate (tare weight).

(f) *Nontemporary storage (NTS).* All authorized storage not in connection with a GBL. NTS usually exceeds 180 days and normally includes packing and shipping of household goods to the warehouse.

(g) *Storage in transit (SIT).* Storage of a shipment by a carrier at origin, enroute, or at destination. SIT is initially limited to 90 days. The transportation officer may extend it to a maximum of 180 days.

(h) *Tender of service.* A carrier's offer to do business with the Department of Defense, including the terms and conditions of the agreement. The Personal Property Traffic Management Regulation (PPTMR), DOD Regulation 4500.34, Appendix A, contains this agreement.

### § 842.38 Delegations of authority.

(a) *Settlement authority:* (1) These individuals have delegated authority to settle, compromise, suspend, or terminate action on claims for $20,000 or less and to accept full payment on any claim:

(i) The Judge Advocate General.

(ii) The Deputy Judge Advocate General.

(iii) The Director of Civil Law.

(iv) Chief, Deputy Chief, and Branch Chiefs, Claims and Tort Litigation Staff.

(v) The SJAs of HQ PACAF, HQ USAFE, and HQ 9AF (for HQ CENTCOM).

(2) These individuals have delegated authority to settle, compromise, suspend, or terminate action on claims for $15,000 or less and to accept full payment on any claim:

(i) SJAs of GCMs in PACAF and USAFE.

(ii) SJAs of single base GCMs.

(3) SJAs of each Air Force base, station, or fixed installation have delegated authority to settle, compromise, suspend, or terminate action on claims for $10,000 or less and to accept full payment on any claim.

(b) *Redelegation of authority*. An individual with settlement authority may redelegate this authority, in writing, to a subordinate judge advocate or civilian attorney.

(c) *Authority to reduce, withdraw, or restore settlement authority*. Any superior settlement authority may reduce, withdraw, or restore settlement authority.

### § 842.39 Statute of limitations.

(a) International commercial air shipments. The government must file suit within 2 years after the delivery date. The period for notifying these carriers of loss or damage is 3 days for luggage, and 7 days for other goods. Setoff is not possible in these cases. Uncollectible claims are sent to HQ USAF/JACC within 6 months from the date of delivery.

(b) *All other CR claims.* The government must file suit within 6 years after the cause of action accrues. It accrues when a responsible US official, service member, or employee knew or reasonably should have known the material facts that caused the claimed loss. The requirement to file a claim within 9 months under commercial bills of lading does not apply to GBLs.

## Subpart F—Military Claims Act (10 U.S.C. 2733)

### § 842.40 Scope of this subpart.

This subpart explains how to settle claims made against the United States for property damage, personal injury, or death caused by military personnel or civilian employees of the Air Force acting in the scope of their employment or otherwise incident to the Air Force's noncombat activities.

### § 842.41 Definitions.

(a) *Appeal.* A request by the claimant or claimant's authorized agent to reevaluate the final decision. A request for reconsideration and an appeal are the same for the purposes of this subpart.

(b) *Final denial.* A letter mailed from the settlement authority to the claimant or authorized agent advising the claimant that the Air Force denies the claim.

(c) *Noncombat activity*. Activity, other than combat, war or armed conflict, that is particularly military in character and has little parallel in the civilian community.

### § 842.42 Delegations of authority.

(a) *Settlement authority:* (1) The Secretary of the Air Force has delegated authority to:

(i) Settle claims for $100,000 or less.

(ii) Settle claims for more than $100,000, paying the first $100,000 and reporting the excess to the General Accounting Office for payment.

(iii) Deny a claim in any amount.

(2) The Judge Advocate General has delegated authority to settle claims for $100,000 or less and deny claims in any amount.

(3) The following individuals have delegated authority to settle claims for $25,000 or less and deny claims in any amount:

(i) The Deputy Judge Advocate General.

(ii) The Director of Civil Law.

(iii) The Chief, Deputy Chief and Branch Chiefs, Claims and Tort Litigation Staff.

(4) The SJA of 9AF for CENTCOM, and the SJAs of PACAF and USAFE have delegated authority to settle claims payable or deny claims filed for $25,000 or less.

(5) SJAs of single base GCMs, and GCMs in PACAF and USAFE, and each Air Force base, station, or fixed installation have delegated authority to settle claims payable, or deny claims filed for $15,000 or less.

(b) *Redelegation of authority.* A settlement authority may redelegate his or her authority for claims not exceeding $25,000, to a subordinate judge advocate or civilian attorney in writing.

(c) *Appellate authority.* Upon appeal, a settlement authority has the same authority specified above. However, no appellate authority below the Office of the Secretary of the Air Force may deny an appeal of a claim it had previously denied.

(d) *Authority to reduce, withdraw, and restore settlement authority.* Any superior settlement authority may reduce, withdraw, or restore delegated authority.

(e) *Settlement negotiations.* A settlement authority may settle a claim in any sum within its delegated settlement authority, regardless of the amount claimed. Send uncompromised claims in excess of the delegated authority to the level with settlement authority. Unsuccessful negotiations at one level do not bind higher authority.

(f) *Special exceptions.* Do not settle claims for the following without HQ USAF/JACC approval:

(1) Legal malpractice.

(2) On the job personal injury or death of an employee of a government contractor or subcontractor.

(3) Assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution committed by an investigative or law enforcement officer.

(4) On-base animal bite cases.

(5) Personal injury from asbestos or radon.

(6) Claims based upon an act or omission of an employee of the government, exercising due care, in the execution of a statute or regulation.

(7) Claims based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the government.

(8) Claims for damage to property of a state, commonwealth, territory, or the District of Columbia caused by ANG personnel engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, or 505 who are assigned to a unit maintained by that state, commonwealth, territory or the District of Columbia.

(9) Claims not payable because payment is not in the best interests of the United States, is contrary to public policy, or is otherwise contrary to the basic intent of the MCA.

(10) Claims presented by a national, or a corporation controlled by a national, of a country at war or engaged in armed conflict with the United States, or any country allied with such enemy country.

(11) Medical malpractice.

[55 FR 2809, Jan. 29, 1990, as amended at 56 FR 1574, Jan. 16, 1991]

### §842.43 Filing a claim.

(a) *How and when filed.* A claim is filed when a federal military agency receives from a claimant or duly authorized agent a properly completed Standard Form 95 or other signed and written demand for money damages in a sum certain. A claim belonging to another agency is promptly transferred to that agency.

(b) *Amending a claim.* A claimant may amend a claim at any time prior to final action. To amend a claim, the claimant or his or her authorized agent must submit a written, signed demand.

### §842.44 Advance payments.

Subpart Q sets forth procedures for advance payments.

### §842.45 Statute of limitations.

(a) A claim must be filed in writing within 2 years after it accrues. It accrues when the claimant discovers or reasonably should have discovered the existence of the act that resulted in the claimed loss. The same rules governing accrual pursuant to the Federal

Tort Claims Act should be applied with respect to the Military Claims Act.

(b) The statutory time period excludes the day of the incident and includes the day the claim was filed.

(c) Consider claims filed after the statute has run when:

(1) The United States is at war or in an armed conflict when the claim accrues, or

(2) The United States enters a war or armed conflict after the claim accrues, and

(3) Good cause is shown. A claim is barred by the statute of limitations if it is filed more than 2 years after the good cause ceases to exist or the war or armed conflict ends. Congress or the President establishes the beginning and end of war or armed conflict.

### § 842.46 Who may file a claim.

(a) Owners of the property or their authorized agents may file claims for property damage.

(b) Injured persons or their duly authorized agents may file claims for personal injury.

(c) Duly appointed guardians of minor children or any other persons legally entitled to do so under applicable local law may file claims for minors' personal injuries.

(d) Executors or administrators of a decedent's estate or another person legally entitled to do so under applicable local law, may file claims based on:

(1) An individual's death.

(2) A cause of action surviving an individual's death.

(e) Insurers with subrogation rights may file claims for losses paid in full by them. The parties may file claims jointly or individually, to the extent of each party's interest, for losses partially paid by insurers with subrogation rights.

(f) Authorized agents signing claims show their title or legal capacity and present evidence of authority to present the claims.

### § 842.47 Who are proper claimants.

(a) Citizens and inhabitants of the United States.

(b) U.S. military personnel and civilian employees.

NOTE: These personnel are not proper claimants for personal injury or death incident to service.

(c) Persons in foreign countries who are not inhabitants of the foreign country.

(d) States, state agencies, counties, or municipalities, or their political subdivisions.

(e) Prisoners of war or interned enemy aliens.

NOTE: These individuals are proper claimants for personal property damage but not for personal injury.

(f) Property owners, their representatives, and those with certain legal relationships with the record owner, including mortgagors, mortgagees, trustees, bailees, lessees and conditional vendees.

(g) Subrogees to the extent they have paid for the claim in question.

### § 842.48 Who are not proper claimants.

(a) Governments of foreign nations, their agencies, political subdivisions, or municipalities.

(b) Agencies and departments of the U.S. Government.

(c) Nonappropriated fund instrumentalities.

(d) Subrogees of § 842.48(a), (b), and (c) of this part.

(e) Inhabitants of foreign countries.

### § 842.49 Claims payable.

(a) Claims arising from negligent or wrongful acts or omissions committed by United States military or civilian personnel while acting in the scope of their employment.

(b) Claims arising from noncombat activities of the United States, whether or not such injuries of damages arose out of the negligent or wrongful acts or omissions by United States military or civilian employees acting within the scope of their employment.

(c) Claims for damage to bailed property under § 842.49(a) or (b) of this part, where all of the following are present:

(1) The United States armed forces assumed the duties of a bailee.

(2) The bailor did not assume the risk of loss by express agreement.

(3) Authorized United States armed forces military or civilian personnel acting in their official capacity properly accepted the property.

(d) Claims for loss or damage to:

(1) Insured or registered mail under §842.49(a), (b), or (c) while in the possession of the United States armed forces military or civilian personnel.

(2) Minimum fee insured mail, but only if it has an insurance number or requirement for hand-to-hand receipt while in the possession of the United States armed forces military or civilian personnel.

(3) Any mail in the possession of the US Postal Service or a Military Postal Service due to an unlawful or negligent inspection, search, or seizure conducted in an oversea military postal facility, under orders of armed forces personnel.

(e) Claims for property damage of US military personnel under conditions listed in paragraphs (a) and (b) of this section, where the damage occurred on a military installation and is not payable under the Military Personnel and Civilian Employees' Claims Act.

(f) Claims filed by DOD military or civilian health care providers or legal personnel for their personal liability by settlement or judgment, to include reasonable costs of such litigation, for their common law tortious acts committed within the scope of their employment under circumstances described in 10 U.S.C. 1089(f) and 10 U.S.C. 1054(f).

[55 FR 2809, Jan. 29, 1990, as amended at 55 FR 32076, Aug. 7, 1990]

### §842.50 Claims not payable.

Exclusions listed in §842.50 (a) through (l) of this part, are based on the wording of 28 U.S.C. 2680. The remainder are based either on statute or court decisions. The interpretation of these exclusions is a Federal question decided under Federal law. Where State law differs with Federal law, Federal law prevails. A claim is not payable under this subpart if it:

(a) Is based on an act or omission of an employee of the government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation is valid. Do not deny claims solely on this exception without the prior approval of HQ USAF/JACC.

(b) Is based on the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the government, whether or not the discretion involved is abused. Do not deny claims solely on this exception without the prior approval of HQ USAF/JACC.

(c) Arises out of the loss, miscarriage, or negligent transmission of letters or postal matter, except those claims payable under §842.49.

(d) Arises with respect to the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise, or any other law enforcement officer.

(e) Is cognizable under the Suits in Admiralty Act or under the Public Vessels Act.

(f) Arises out of an act or omission of any employee of the government in administering the provisions of the Trading With the Enemy Act.

(g) Is for damages caused by the imposition or establishment of a quarantine by the United States.

(h) Arises out of an assault or battery, unless the assault or battery arises out of the acts or omissions of investigative or law-enforcement officers of the US Government, or arises out of the performance of medical, dental or related health care functions.

(i) Arises out of false imprisonment, false arrest, malicious prosecution or abuse of process, unless such actions were committed by an investigative or law enforcement officer of the United States who is empowered by law to execute searches, seize evidence, or make arrests for violations of federal law.

(j) Arises out of libel, slander, misrepresentation, or deceit.

(k) Arises out of interference with contract rights.

(l) Arises from the fiscal operations of the Department of the Treasury or from the regulation of the monetary system.

(m) Arises out of the combat activities of the military or naval forces, or the Coast Guard, during time of war.

(n) Arises from activities of the Tennessee Valley Authority.

(o) Arises from the activities of the Panama Canal Company.

(p) Arises from the activities of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives.

(q) Is for the personal injury or death of a member of the Armed Forces of the United States, including the Coast Guard, incurred incident to service.

(r) Is for the personal injury or death of a government employee for whom benefits are provided by the FECA.

(s) Is for the personal injury or death of an employee, including nonappropriated fund employees, for whom benefits are provided by the Longshore and Harbor Workers' Compensation Act (LHWCA).

(t) Is for the personal injury or death of any government contractor employee for whom benefits are provided under any worker's compensation law, or under any contract or agreement providing employee benefits through insurance, local law, or custom when the United States pays them either directly or as part of the consideration under the contract. Only HQ USAF/JACC may settle these claims.

(u) Is for taking of property as by technical trespass or overflight of aircraft and of a type contemplated by the Fifth Amendment to the US Constitution, or otherwise constitutes a taking.

(v) Is for damage from or by flood or flood waters at any place.

(w) Is for damage to property or for any death or personal injury occurring directly or indirectly as a result of the exercise or performance of, or failure to exercise or perform, any function or duty by any Federal agency or employee of the government to carry out the provisions of the Federal Civil Defense Act of 1950 during the existence of a civil defense emergency.

(x) Is for patent or copyright infringement.

(y) Is for damage to property of a state, commonwealth, territory, or the District of Columbia caused by ANG personnel engaged in training or duty under 32 U.S.C. 316, 502, 503, 504, or 505 who are assigned to a unit maintained by that state, commonwealth, territory, or the District of Columbia unless the express approval for payment is received from HQ USAF/JACC.

(z) Is for damage to property or for any death or personal injury arising out of the activities of any federal agency or employee of the government in carrying out the provisions of the Federal Disaster Relief Act of 1954.

(aa) Arises from activities that present a political question.

(bb) Results wholly from the negligent, or wrongful act of the claimant or agent.

(cc) Is for reimbursement for medical, hospital, or burial expenses furnished at the expense of the United States.

(dd) Arises from contractual transactions, express or implied, including rental agreements, sales agreements, leases and easements, which are payable or enforceable under such contracts or arise out of irregular procurement and implied contract.

(ee) Arises from private, as distinguished from government, transactions.

(ff) Is based solely on compassionate grounds.

(gg) Is for rent, damage, or other expenses or payments involving the regular acquisition, use, possession, or disposition of real property of interests therein by and for the Air Force.

(hh) Is not in the best interests of the United States, is contrary to public policy, or is otherwise contrary to the basic intent of the MCA; for example, claims by inhabitants of unfriendly foreign countries or by or based on injury or death of individuals considered to be unfriendly to the United States. Claims considered not payable under this paragraph are forwarded, with recommendations for disposition, through claims channels to HQ USAF/JACC.

(ii) Is presented by a national, or a corporation controlled by a national, of a country at war or engaged in armed conflict with the United States, or any country allied with such enemy country unless the appropriate settlement authority determines that the claimant is, and at the time of the incident was, friendly to the United States. A prisoner of war or an interned enemy alien is not excluded as to a claim for damage, loss, or destruction of personal property in the custody of the Government otherwise payable. Claims

considered not payable under this paragraph are forwarded with recommendations for disposition, through claims channels, to HQ USAF/JACC.

(jj) Is for personal injury or death of military or civilian personnel of a foreign country, if their personal injury or death was suffered incident to their service.

(kk) Is for damage to or loss of bailed property when the bailor specifically assumes such risk.

(ll) Is for property damage, personal injury, or death occurring in a foreign country to an inhabitant of that country.

(mm) Is for the loss of a rental fee for personal property.

(nn) Arises out of matters which are in litigation against the United States.

(oo) Is payable under any one of the following statutes and implementing regulations:

(1) Federal Tort Claims Act.

(2) Foreign Claims Act.

(3) International Agreements Claims Act.

(4) Air Force Admiralty Claims Act and the Admiralty Extension Act.

(5) National Guard Claims Act.

(6) Military Personnel and Civilian Employees' Claims Act.

### §842.51 Applicable law.

This paragraph provides the existing law governing liability, measurement of liability and the effects of settlement upon awards.

(a) *Extent of liability*. Where the claim arises is important in determining the extent of liability.

(1) When a claim arises in the United States, the law of the place where the act or omission occurred governs liability. The settlement authority considers the local law on such issues as dangerous instrumentalities, assumption of risk, res ipsa loquitur, last clear chance, discovered peril, and comparative and contributory negligence. Absolute liability is never imposed.

(2) *Claims in foreign countries.* (i) In claims arising in a foreign country, where the claim is for personal injury, death, or damage to or loss of real or personal property caused by an act or omission alleged to be negligent, wrongful, or otherwise involving fault of military personnel or civilian officers or employees of the United States acting within the scope of their employment, liability or the United States is determined according to general principles of tort law common to the majority of American jurisdictions, as evidenced by Federal case law and standard legal publications, except as to the principle of absolute liability.

(ii) The law of the foreign country governing the legal effect of contributory or comparative negligence by the claimant will be applied in determining the relative merits of the claim. In the unusual situation where foreign law governing contributory or comparative negligence does not exist, use traditional rules of contributory negligence. Foreign rules and regulations governing the operation of motor vehicles (rules of the road) are applied to the extent those rules are not specifically superseded or preempted by United States military traffic regulations.

(3) When adjudicating claims based upon negligence, the principle of absolute liability is not applicable, even though otherwise prescribed by applicable local law.

(4) The meaning and construction of the MCA is a Federal question to be determined by Federal law.

(b) *General information:* (1) The measure of daages in claims arising in the United States or its possessions is determined according to the law of the place where the act or omission occurred. The measure of damages in claims arising overseas is determined according to general principles of American tort law.

(2) Apportion damages against the United States in the same manner as they are apportioned in suites against private persons if local law applies comparative negligence.

(3) Do not deduct proceeds from private insurance policies except to the extent allowed by local law. However, proceeds are deducted if the policy was paid for by the United States.

(4) Deduct compensation and benefits from the Department of Veterans Affairs, or monetary value received from any U.S. Government associated source from the damages which may be awarded. Deduct sick and annual leave payments if local law allows.

(5) Do not approve:

(i) Punitive damages.

(ii) Cost of medical or hospital services furnished at U.S. expense.

(iii) Cost of burial expenses paid by the United States.

(c) *Settlement by insurer or joint tortfeasor.* When settlement is made by an insurer or joint tort-feasor and an additional award is warranted, an award may be made if both of the following are present:

(1) The United States is not protected by the release executed by the claimant.

(2) The total amount received from such source is first deducted.

### § 842.52 Appeal of final denials.

(a) A claimant may appeal the final denial of the claim. The claimant sends the request, in writing, to the settlement authority within a reasonable time following the final denial. Sixty days is considered a reasonable time, but the settlement authority may waive the time limit for good cause.

(b) Upon receipt of the appeal, the original settlement authority reviews the appeal.

(c) Where the settlement authority does not reach a final agreement on an appealed claim, he or she sends the entire claim file to the next higher settlement authority, who is the appellate authority for that claim.

(d) The decision of the appellate authority is the final administrative action on the claim.

### § 842.53 Right of subrogation, indemnity, and contribution.

The Air Force becomes subrogated to the rights of the claimant upon settling a claim. The Air Force has the rights of contribution and indemnity permitted by the law of the situs, or under contract. Do not seek contribution or indemnity from US military personnel or civilian employees whose conduct gave rise to government liability.

### § 842.54 Attorney fees.

In the settlement of any claim pursuant to 10 U.S.C. 2733 and this subpart, attorney fees will not exceed 20 percent of any award provided that when a claim involves payment of an award over $1,000,000, attorney fees on that part of the award exceeding $1,000,000 may be determined by the Secretary of the Air Force. For the purposes of this paragraph, an award is deemed to be the cost to the United States of any trust or structured settlement, and not its future value.

## Subpart G—Foreign Claims (10 U.S.C. 2734)

### § 842.55 Scope of this subpart.

This subpart tells how to settle and pay claims against the United States presented by inhabitants of foreign countries for property damage, personal injury, or death caused by military and civilian members of the US Armed Forces in foreign countries.

### § 842.56 Definitions.

(a) *Foreign country.* A national state other than the United States, including any place under jurisdiction of the United States in a foreign country.

(b) *Inhabitant of a foreign country.* A person, corporation, or other business association whose usual place of abode is in a foreign country. The term ''inhabitant'' has a broader meaning than such terms as ''citizen'' or ''national'', but does not include persons who are merely temporarily present in a foreign country. It does not require foreign citizenship or domicile.

(c) *Appointing authority.* An Air Force official authorized to appoint members to foreign claims commissions (FCC).

### § 842.57 Delegations of authority.

(a) *Settlement authority:* (1) The Secretary of the Air Force has the authority to:

(i) Settle claims for payment of $100,000 or less.

(ii) Settle claims for more than $100,000, pay the first $100,000, and report the excess to the General Accounting Office for payment.

(iii) Deny claims in any amount.

(2) The Judge Advocate General has delegated authority to:

(i) Settle claims for payment of $100,000 or less.

(ii) Deny claims in any amount.

(3) The Deputy Judge Advocate General, Director of Civil Law, and the Chief, Deputy Chief and Branch Chiefs, Claims and Tort Litigation Staff are

each a foreign claims commission and have delegated authority to:

(i) Settle claims for payment of $50,000 or less.

(ii) Deny a claim in any amount.

(4) The SJAs of PACAF, USAFE, 9AF (for CENTCOM) and AFSPACECOM (for Greenland and Canada) are each a foreign claims commission and have delegated authority to approve claims for payment arising within their geographic area of responsibility for $50,000 or less, or deny claims of $50,000 or less.

(5) The SJAs of Numbered Air Forces in PACAF and USAFE; the SJA of HQ TUSLOG; the SJA of 12AF (for South America); and the SJAs of Lajes AB, Azores, Patrick AFB, FL, and Howard AFB, Panama are each a foreign claims commission and have delegated authority to:

(i) Recommend payment in any amount.

(ii) Settle claims for payment of $25,000 or less.

(iii) Deny claims for $50,000 or less.

(6) The SJAs of each Air Force base, station and fixed installation in PACAF, USAFE, and CENTCOM, are each a foreign claims commission and have delegated authority to:

(i) Recommend payment in any amount.

(ii) Settle claims for payment of $10,000 or less.

(iii) Deny claims for $25,000 or less.

(b) *Authority to appoint FCCs.* (1) The Chief, Claims and Tort Litigation Staff, has the delegated authority to appoint a judge advocate or civilian attorney as a FCC and to redelegate all or a part of his or her settlement authority to that FCC.

(2) A settlement authority appointed as a FCC in paragraph (a) of this section may appoint one or more subordinate judge advocates or civilian attorneys as FCCs, and may redelegate all or part of that settlement authority to those FCCs, in writing. Every FCC must have authority to settle claims for at least $10,000.

(c) *Authority to reduce, withdraw, or restore settlement authority.* Any superior settlement authority may reduce, withdraw, or restore delegated authority, in writing, except no one may reduce or withdraw the authority of a FCC to settle claims for $10,000 or less.

(d) *Settlement negotiations.* A settlement authority may settle a claim in any sum within its settlement authority, regardless of the amount claimed. Send uncompromised claims in excess of the delegated authority through claims channels to the level with settlement authority. Unsuccessful negotiations at one level do not bind higher authority.

(e) Special exceptions. Do not settle claims for medical malpractice without HQ USAF/JACC approval.

[55 FR 2809, Jan. 29, 1990, as amended at 55 FR 32076, Aug. 7, 1990; 56 FR 1574, Jan. 16, 1991]

### §842.58 Filing a claim.

(a) *How and when filed.* A claim is filed when a federal agency receives from a claimant or authorized agent a properly completed SF 95 or other signed and written demand for money damages in a sum certain. A claim belonging to another agency is promptly transferred to the appropriate agency.

(b) *Amending a claim.* A claimant may amend a claim at any time prior to final action. An amendment must be in writing and signed by the claimant or authorized agent.

### §842.59 Advance payments.

Subpart Q outlines procedures for advance payments.

### §842.60 Statute of limitations.

(a) A claim must be filed in writing within 2 years after it accrues. It accrues when the claimant discovers or reasonably should have discovered the existence of the act that resulted in the claimed loss or injury.

(b) In computing the statutory time period, the day of the incident is excluded and the day the claim was filed is included.

(c) War or armed conflict does not toll the statute of limitations.

### §842.61 Who may file a claim.

(a) Owners of the property or their authorized agents for property damage.

(b) Injured persons or other authorized agents for personal injury.

(c) Executors or administrators of a decedent's estate, or any other person

legally entitled to do so under applicable local law, for an individual's death.

(d) Authorized agents (including the claimant's attorney) must show their title or legal capacity and present evidence of authority to present the claim.

### § 842.62 Who are proper claimants.

Claimants include inhabitants of a foreign country who are:

(a) Foreign nationals.

(b) US nationals, unless they reside there primarily because they are:

(1) Employed directly by the United States.

(2) Employed by a US civilian contractor to further performance of a contract with the United States.

(3) Sponsored by or accompanying someone employed as described in § 842.62(b) (1) or (2) of this part.

(c) US corporations with a place of business in the country in which the claim arose.

(d) Foreign governments and their political subdivisions, including a municipal and prefectural government.

(e) Foreign companies and business entities.

### § 842.63 Who are not proper claimants.

Persons who are not proper claimants include:

(a) Insurers and other subrogees.

(b) Dependents accompanying US military and US national civilian employees.

(c) Foreign military personnel suffering property damage, personal injury, or death from a joint military mission with the United States or from conduct of a US military member or employee acting in the scope of employment unless an international agreement specifically provides for recovery.

(d) Civilian employees of the United States, including local inhabitants, injured in the scope of their employment.

(e) National governments and their political subdivisions engaging in war or armed conflict with the United States or its allies.

(f) A national or nationally controlled corporation of a country engaging in war or armed conflict with the United States or its allies, unless the FCC or local military commander determines the claimant is friendly with the United States.

### § 842.64 Payment criteria.

The following criteria is considered before determining liability.

(a) The incident causing the damage or injury must occur outside the United States. It must be caused by noncombatant activities of the US Armed Forces or by civilian employees or military members of the Armed Forces.

(b) Negligence is not a prerequisite.

(c) Scope of employment is considered in the following situations.

(1) It is a prerequisite to US responsibility if the employee causing the damage or injury is a local inhabitant, a prisoner of war, or an interned enemy alien. These persons are ''employees'' within the meaning of the Foreign Claims Act (FCA) only when in the service of the United States. Ordinarily, a slight deviation as to time or place does not constitute a departure from the scope of employment. The purpose of the activity and whether it furthers the general interest of the United States is considered. If the claim arose from the operation or use of a US Armed Forces vehicle or other equipment by such a person, pay it provided local law imposes liability on the owner of the vehicle or other equipment in the circumstances involved.

(2) It is immaterial when the claim arises from the acts or omissions of any US Armed Forces member or employee not listed in § 842.64(c)(1) of this part. The Act imposes responsibility on the United States when it places a US citizen or non-US citizen employee in a position to cause the injury or damage. If the cause is a criminal act clearly outside the scope of employment, ordinarily pay the claim and consider disciplinary action against the offender.

### § 842.65 Claims not payable.

A claim is not payable when it:

(a) Has been paid or denied by a competent tribunal under the North Atlantic Treaty Organization (NATO), Status of Forces Agreement (SOFA), or any similar SOFA or treaty.

(b) Is purely contractual in nature.

(c) Is for attorney fees, punitive damages, a judgment or interest on a judgment, bail, or court costs.

(d) Accrues from a private contractual relationship between US personnel and third parties about property leases, public utilities, hiring of domestic servants, and debts of any description. This claim is sent for action to the commander of the person concerned (see 32 CFR part 818).

(e) Is based solely on compassionate grounds.

NOTE: A Solatium payment is paid from O&M funds as an investigative expense.

(f) Is a bastardy claim.

(g) Is for patent or copyright infringement.

(h) Is waived under an international agreement.

(i) Is for rent, damage, or other payments involving regular acquisition, possession, and disposition of real property by or for the Air Force.

(j) Is filed by a Communist country or its inhabitants, unless authorized by HQ USAF/JACC.

(k) Is for real property taken by a continuing trespass.

(l) Is for personal injury or death of a person covered by:

(1) The Federal Employees' Compensation Act (5 U.S.C. 8101, *et seq.*).

(2) The Longshore and Harbor Workers' Compensation Act (33 U.S.C. 901, *et seq.*).

(3) A US contract or agreement providing employee benefits through insurance, local law, or custom, where the United States pays for them either directly or as part of the consideration under the contract. (See 42 U.S.C. 1651 and 42 U.S.C. 1701.) The Judge Advocate General or Chief, Claims and Tort Litigation Staff, HQ USAF/JACC, may authorize an award where local benefits are not adequate. Local benefits are deducted from any award.

(m) Results from an action by an enemy, or directly or indirectly from an act of the armed forces of the United States in combat, except that a claim may be allowed if it arises from an accident or malfunction incident to the operation of an aircraft of the armed forces of the United States, including its airborne ordnance, indirectly related to combat, and occurring while preparing for or going to, or returning from a combat mission.

(n) Is based on negligence of a concessionaire or other independent contractor.

(o) Arises out of personal activities of dependents, guests, servants, or pets of members and employees of the US Armed Forces. (This includes situations where local law imposes strict liability or where the head of a household is held vicariously liable for their negligence.)

(p) Is the subject of litigation against the United States or its employees. This restriction does not apply to joint criminal/civil proceedings in a foreign court. Claims settlement may be authorized by HQ USAF/JACC in appropriate cases on request.

(q) Is covered under US admiralty laws, unless authorized by The Judge Advocate General or Chief, Claims and Tort Litigation Staff.

(r) Is one for which a foreign government is responsible under SOFA, treaty, or other agreement. However, HQ USAF/JACC may authorize payment of a claim where the foreign government refuses to recognize its legal responsibilities and the claimant has no other means of compensation.

### §842.66 Applicable law.

This paragraph provides guidance to determine the applicable law for assessment of liability.

(a) A claim is settled under the law and standards in effect in the country where the incident occurred. In calculating the amount of any lump sum award, the present value of any periodic payment upon which the award is based, is computed, unless the law of the place of occurrence prohibits it.

(b) Contributory negligence committed by the claimant, claimant's agent, or employee is not used as a bar to recovery unless local law or custom requires it. If the comparative negligence doctrine is used, the percentage of negligence of each party is reflected in the apportionment of liability. The amount of damage sustained by both parties is apportioned according to local law.

(c) The following principles of the collateral source doctrine are applied

in settling a claim except where local law provides otherwise:

(1) Any sums the claimant recovers from collateral sources, including proceeds of property insurance the claimant paid for are not deducted from the claim except when those sums are from:

(i) The US Government.

(ii) A US military member or employee.

(iii) A Joint tort-feasor.

(iv) An Insurer of § 842.66(c)(1)(i), (ii), or (iii), above.

(2) Do not deduct insurance or any other payments where the US military member or employee would have to make reimbursement.

### § 842.67 Reconsideration of final denials.

This paragraph provides the procedures used to reconsider a final denial.

(a) An FCC may reopen, reverse, or reconsider, in whole or in part, any claim it previously decided if the request for reconsideration is received in a reasonable time. Sixty days is considered a reasonable time, but the FCC may waive the time limit for good cause.

(b) An FCC reconsiders the final action on a claim when there is:

(1) New and material evidence concerning the claim.

(2) Obvious error in facts or calculation of the original settlement.

(3) Fraud or collusion in the original submission of the claim.

(c) The FCC must state the reason for reconsideration in its opinion. A court decision is not in itself sufficient basis for reconsidering a claim, but the facts that resulted in the judgment may warrant reconsideration. The amount of a court judgment is not binding on a FCC's determination of damage, but the commission may consider the judgment as evidence of the local law on the subject.

### § 842.68 Right of subrogation, indemnity, and contribution.

The Air Force becomes subrogated to the rights of the claimant upon settling a claim. The Air Force has the rights of indemnity and contribution permitted by the law of the situs or under contract. Contribution or indemnity should not be sought:

(a) From US military personnel or civilian employees whose conduct gave rise to government liability.

(b) Where recovery action would be harmful to international relations.

## Subpart H—International Agreement Claims (10 U.S.C. 2734a and 2734b)

### § 842.69 Scope of this subpart.

This subpart governs Air Force actions in investigating, processing, and settling claims under international agreements.

### § 842.70 Definitions.

The following are general definitions. See the relevant international agreement for the specific meaning of a term to use with a specific claim.

(a) *Civilian component.* Civilian personnel accompanying a force of a contracting party, who are employed by that force. Indigenous employees, contractor employees, or members of the American Red Cross are not a part of the civilian component unless specifically included in the agreement.

(b) *Contracting party.* A nation signing the governing agreement.

(c) *Force.* Personnel belonging to the land, sea, or air armed services of one contracting party when in the territory of another contracting party in connection with their official duties.

(d) *Legally responsible.* A term of art providing for settlement of claims under cost sharing international agreements consistent with the law of the receiving State. Often these claims are caused by local inhabitant employees, not part of the civilian component, under a respondeat superior theory.

(e) *Receiving state.* The country where the force or civilian component of another party is located.

(f) *Sending state.* The country sending the force or civilian component to the receiving State.

(g) *Third parties.* Those other than members of the force and civilian component of the sending or receiving States. Dependents, tourists, and other noninhabitants of a foreign country are third parties unless the agreement specifically excludes them.

**§842.71 Delegations of authority.**

(a) *Reimbursement authority.* The following individuals have delegated authority to reimburse or pay a pro rata share of a claim or object to a claim in any amount:

(1) The Secretary of the Air Force.

(2) The Judge Advocate General.

(3) The Deputy Judge Advocate General.

(4) The Chief of Civil Law.

(5) Chief, Deput Chief, and Branch Chiefs, Claims and Tort Litigation Staff.

(6) The SJAs and Deputy SJAs of PACAF, USAFE, 5th Air Force, Lajes Field, and 9th Air Force (for CENTCOM).

(b) *Redelegation of authority.* A settlement authority may redelegate his or her authority to a subordinate judge advocate or civilian attorney in writing.

(c) *Authority to reduce, withdraw, and restore settlement authority.* Any superior settlement authority may reduce, withdraw, or restore delegated authority.

**§842.72 Filing a claim.**

(a) *Claims arising in a foreign country.* (1) If a third party claimant tries to file an international agreement claim with Air Force, direct that person to the appropriate receiving State office.

(2) If the Air Force receives a claim, send it to the US sending State office for delivery to the receiving State.

(b) *Claims arising in the United States.* The claimant files tort claims arising from the act or omission of military or civilian personnel of another contracting party at any US military installation. The installation receiving the claim either:

(1) Investigates it if the foreign personnel are assigned there.

(2) Sends it to the installation where the foreign personnel are assigned.

## Subpart I—Use of Government Property Claims (10 U.S.C. 2737)

**§842.73 Scope of this subpart.**

This subpart explains how to settle and pay claims against the United States, for property damage, personal injury, or death incident to the use of a government vehicle or any other government property by Air Force military and civilian personnel which are not payable under any other statute.

**§842.74 Definitions.**

(a) *Government installation.* A United States Government facility having fixed boundaries and owned or controlled by the government.

(b) *Vehicle.* Every mechanical device used as a means of transportation on land.

**§842.75 Delegations of authority.**

(a) *Settlement authority.* The following individuals have delegated authority to settle claims for $1,000 or less and deny them in any amount.

(1) The Judge Advocate General.

(2) The Deputy Judge Advocate General.

(3) Director of Civil Law.

(4) Chief, Deputy Chief and Branch Chiefs, Claims and Tort Litigation staff.

(5) SJA of HQ 9AF for CENTCOM, and SJAs of PACAF and USAFE.

(6) SJAs of single base GCMs and GCMs in PACAF and USAFE.

(7) The SJA of each Air Force base, station and fixed installation.

(8) Any other judge advocate designated by The Judge Advocate General.

(b) *Redelegation of authority.* A settlement authority may redelegate it to a subordinate judge advocate or civilian attorney in writing.

(c) *Authority to reduce, withdraw, and restore settlement authority.* Any superior settlement authority may reduce, withdraw, or restore delegated authority.

**§842.76 Filing a claim.**

(a) *How and when filed.* A claim has been filed when a federal agency receives from a claimant or the claimant's duly authorized agent written notification of an incident of property damage, personal injury or death accompanied by a demand for money damages in a sum certain. A claim incorrectly presented to the Air Force will be promptly transferred to the appropriate Federal agency.

(b) *Amending a claim.* A claimant may amend a claim at any time prior to

final Air Force action. Amendments will be submitted in writing and signed by the claimant or the claimant's duly authorized agent.

### § 842.77 Statute of limitations.

(a) A claim must be presented in writing within 2 years after it accrues. It accrues at the time the claimant discovers, or in the exercise of reasonable care should have discovered, the existence of the act causing property damage, personal injury or death for which the claim is filed.

(b) In computing time to determine whether the period of limitation has expired, exclude the incident date and include the date the claim was filed.

### § 842.78 Claims payable.

When all of the following are present, payment of a claim in the amount of $1,000 or less is authorized if it:

(a) Is for property damage, personal injury, or death. (Payment for a personal injury or death claim is limited to costs of reasonable medical, hospital, and burial expenses actually incurred and not otherwise furnished or paid by the United States.)

(b) Was caused by a military member or civilian employee of the Air Force, whether acting within or outside the scope of employment.

(c) Arose from the use of a government vehicle at any place or other government property on a government installation, and

(d) Is not payable under any other provision of law except Article 139, UCMJ.

### § 842.79 Claims not payable.

A claim is not payable if it is:

(a) Payable under any other provision of the law.

(b) Caused wholly or partly by a negligent or wrongful act of the claimant, the claimant's agent, or employee.

(c) A subrogated claim.

(d) Recoverable from other sources such as an insurance policy, or recovered from action under Article 139, UCMJ.

### § 842.80 Reconsideration of final denial.

(a) The statute does not provide for appeals. The original settlement authority may, however, reconsider any decision. There is no set format for a reconsideration but it should be submitted in writing within 60 days of the original decision.

(b) The settlement authority may either grant all or any portion of the requested relief without referral to any other office, or forward the entire file with the reasons for the action and recommendations to the next higher claims settlement authority for independent review and final action.

### § 842.81 Settlement agreement.

Do not pay a claim unless the claimant accepts the amount offered in full satisfaction of the claim and signs a settlement agreement to that effect.

## Subpart J—Admiralty Claims (10 U.S.C. 9801–9804, 9806; 46 U.S.C. 740)

### § 842.82 Scope of this subpart.

It sets forth the procedure for administrative settlement of admiralty and maritime claims in favor of and against the United States.

### § 842.83 Definitions.

(a) *Admiralty contracts.* A contract covering maritime services or a maritime transaction such as vessel procurement and space for commerical ocean transportation of DOD cargo, mail, and personnel is an admiralty contract.

(b) *General average.* General average is the admiralty rule that when someone's property is thrown overbaord to save a ship, the ship owner and all owners of the cargo must share the loss.

(c) *Maritime torts.* A maritime tort is one committed in navigable waters or on land or in the air where a substantial element of the damage, personal injury, or death occurred in navigable waters. The activity causing the tortious act must bear some significant relationship to traditional maritime activity.

(d) *Vessel.* Every description of watercraft used or usable as a means of transportation on water is a vessel. (1 U.S.C. 3)

### §842.84 Delegations of authority.

(a) The following officials have the authority to settle a claim against the Air Force in the amounts provided:

(1) The Secretary of the Air Force has the authority to:

(i) Settle a claim for payment of more than $500,000 and to certify it to Congress for payment.

(ii) Settle and pay a claim for $500,000 or less.

(iii) Deny a claim in any amount.

(2) The following individuals have delegated authority to settle claims for $100,000 or less:

(i) The Judge Advocate General.

(ii) The Deputy Judge Advocate General.

(iii) The Director of Civil Law.

(iv) The Chief and Deputy Chief, Claims and Tort Litigation staff.

(b) Delegation of settlement authority on claims in favor of the United States.

(1) The Secretary of the Air Force has the authority to settle claims for damage to property under the jurisdiction of the Air Force in an amount not to exceed $500,000, and to settle claims for salvage services performed by the Air Force in any amount.

(2) HQ USAF/JACC refers all claims for damage to property under the jurisdiction of the Air Force for more than $500,000 to the Department of Justice.

(3) The following individuals have delegated authority to settle claims for $100,000 or less and deny them in any amount:

(i) The Judge Advocate General.

(ii) The Deputy Judge Advocate General.

(iii) The Director of Civil Law.

(iv) The Chief and Deputy Chief, Claims and Tort Litigation Staff.

[55 FR 2809, Jan. 29, 1990, as amended at 55 FR 32077, Aug. 7, 1990; 56 FR 1574, Jan. 16, 1991]

### §842.85 Reconsidering claims against the United States.

This section provides the policy and procedures to reconsider any maritime claim made against the United States.

(a) The settlement authority may reconsider any claim previously disapproved in whole or in part when either:

(1) The claimant submits new evidence in support of the claim.

(2) There were errors or irregularities in the submission or settlement of the claim.

(b) There is no right of appeal to higher authority under this subpart.

## Subpart K—Claims Under the Federal Tort Claims Act (28 U.S.C. 1346(b), 2402, 2671, 2672, 2674–2680)

### §842.86 Scope of this subpart.

This subpart governs claims against the United States for property damage, personal injury, or death, from the negligent or wrongful act or omission of Air Force military or civilian personnel while acting within the scope of their employment. It also covers similar tort claims generated by Air National Guard (ANG) members performing specified duty under 32 U.S.C. on or after 29 December 1981.

### §842.87 Definitions.

(a) *Compromise.* An agreed settlement based upon the facts, the law, and the application of the law to the facts.

(b) *Final denial.* A letter the settlement authority mails to the claimant or authorized agent advising him or her that the Air Force denies his or her claim.

(c) *Reconsideration.* A request by the claimant or claimant's authorized agent to reevaluate a final decision. A request for reconsideration and an appeal are the same thing.

(d) *Negligence.* A departure from the conduct expected from a reasonably prudent person under similar circumstances.

(e) *Proximate cause.* The dominant or primary cause involving a natural and continuous sequence unbroken by an effective cause.

### §842.88 Delegations of authority.

(a) *Settlement authority.* (1) Subject to the prior written, approval of the United States Attorney General or his designee, the following individuals have delegated authority to settle claims in excess of $25,000, to settle claims for $25,000 or less, and to deny a claim in any amount:

(i) The Judge Advocate General.

(ii) The Deputy Judge Advocate General.

(iii) The Director of Civil Law.

(2) Subject to the prior written approval of the United States Attorney General or his designee, the Chief, Claims and Tort Litigation Staff has delegated authority to settle claims in excess of $25,000 up to a limit of $50,000, to settle claims for $25,000 or less; and to deny a claim in any amount.

(3) The Deputy Chief and Branch Chiefs, Claims and Tort Litigation Staff have delegated authority to settle claims for $25,000 or less and deny a claim in any amount.

(4) The SJA of HQ 9AF for CENTCOM, and SJAs of PACAF and USAFE have delegated authority to settle claims payable, and deny claims filed, for $25,000 or less.

(5) The following individuals have delegated authority to settle claims payable, and deny claims filed, for $15,000 or less:

(i) SJAs of single base GCMs.

(ii) SJAs of GCMs in PACAF and USAFE.

(iii) SJAs of each Air Force base, station, or fixed installation.

(b) *Redelegation of authority.* A settlement authority may be redelegated, in writing, to a subordinate judge advocate or civilian attorney.

(c) *Authority to reduce, withdraw, and restore settlement authority.* Any superior settlement authority may reduce, withdraw, or restore delegated authority.

(d) *Settlement negotiations.* A settlement authority may settle a claim filed in any amount for a sum within the delegated authority. Unsettled claims in excess of the delegated authority will be sent to the next highest level with settlement authority. Unsuccessful negotiations at one level do not bind higher authority.

(e) *Special exceptions.* Do not settle claims for the following without HQ USAF/JACC approval:

(1) Legal malpractice.

(2) On the job personal injury or death of an employee of a government contractor or subcontractor.

(3) Assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution committed by an investigative or law enforcement officer.

(4) Animal bites.

(5) Personal injury from asbestos or radon.

(6) Medical malpractice.

[55 FR 2809, Jan. 29, 1990, as amended at 56 FR 1574, Jan. 16, 1991]

### § 842.89 Statute of limitations.

A claim must be presented in writing within 2 years after it accrues.

(a) Federal, not state law, determines the time of accrual. A claim normally accrues at the time of injury when essential operative facts are apparent. However, in other instances, especially in complex medical malpractice cases, a claim accrues when the claimant discovers or reasonably should have discovered the existence of the act that resulted in the claimed loss.

(b) In computing the statutory time period, the day of the incident is excluded and the day the claim was filed is included.

(c) The Air Force has 6 months to consider a properly filed claim, after which the claimant may file suit. The claimant's right to sue ends 6 months from the date the final denial is mailed.

(d) Properly asserted third party actions, as permitted under the Federal Rules of Civil Procedure, may be brought against the United States without first filing a claim. In such instances those actions may start more than 2 years after the claim has accrued.

[55 FR 2809, Jan. 29, 1990, as amended at 55 FR 32077, Aug. 7, 1990]

### § 842.90 Reconsideration of final denials.

(a) A claimant may request a settlement authority who denied a claim to reconsider that claim. If the settlement authority denies the request, the claim file is sent to the next higher claims settlement authority for action.

(b) A request for reconsideration must be filed in writing within 6 months of the final denial and prior to initiation of a suit. A request for reconsideration starts a new 6-month period for the Air Force to consider the claim. The claimant may not sue during that period.

### §842.91 Settlement agreements.

The claimant must sign a settlement agreement and general release before any payment is made.

## Subpart L—Property Damage Tort Claims in Favor of the United States (31 U.S.C. 3701, 3711–3719)

### §842.92 Scope of this subpart.

This subpart describes how to assert, administer, and collect claims for damage to or loss or destruction of government property through negligence or wrongful act. It does not cover admiralty, hospital recovery, or nonappropriated fund claims.

### §842.93 Delegations of authority.

(a) *Settlement authority.* (1) The following individuals have delegated authority to settle, compromise, suspend, or terminate action on claims for $20,000 or less and to accept full payment on any claim:

(i) The Judge Advocate General.

(ii) The Deputy Judge Advocate General.

(iii) The Director of Civil Law.

(iv) Chief, Deputy Chief, and Branch Chiefs, Claims and Tort Litigation Staff.

(2) The SJA of HQ 9AF (for CENTCOM), and the SJAs of PACAF and USAFE have delegated authority to settle, compromise, suspend, or terminate action on claims for $15,000 or less and to accept full payment on any claim.

(3) SJAs of GCMs located in PACAF and USAFE and single base GCMs located in CONUS have delegated authority to settle, compromise, suspend, or terminate action on claims for $15,000 or less and to accept full payment on any claim.

(4) SJAs of each Air Force base, station or fixed installation have delegated authority to settle, compromise, suspend, or terminate action on claims for $10,000 or less and to accept full payment on any claim.

(b) *Redelegation of authority.* A settlement authority may redelegate it to a subordinate judge advocate or civilian attorney, in writing.

(c) *Authority to reduce, withdraw, or restore settlement authority.* Any superior settlement authority may reduce, withdraw, or restore delegated authority.

### §842.94 Assertable claims.

A claim may be asserted in writing for loss of or damage to government property, against a tort-feasor when:

(a) Damage results from negligence and the claim is for:

(1) More than $100.

(2) Less than $100 but collection costs are small.

(b) The claim is based on a contract and the contracting officer does not intend to assert a claim under the contract. The contracting officer's intention not to assert a claim should be recorded in a memorandum for the record and placed in the claim file.

(c) The claim is for property damage arising from the same incident as a hospital recovery claim. (The two claims should be consolidated and processed under subpart N).

(d) The Tort-feasor or his insurer presents a claim against the government arising from the same incident. (Both claims should be processed together.)

(e) The claim is assertable as a counterclaim under an international agreement. (The claim should be processed under subpart H).

(f) The claim is based on product liability. HQ USAF/JACC approval must be obtained before asserting the claim.

### §842.95 Non-assertable claims.

A claim is not assertable under this subpart when it is for:

(a) Reimbursement for military or civilian employees for their negligence claims paid by the United States.

(b) Loss or damage to government property:

(1) Caused by a nonappropriated fund employee acting in the scope of employment.

(2) For which a person has accountability and responsibility under the Report of Survey system.

(c) Loss or damage to nonappropriated fund property assertable under other provisions.

(d) Loss or damage caused by an employee of an instrumentality of the

government in the absence of statutory authority to reimburse.

(e) Monies recovered against a foreign government or any of its political subdivisions. (HQ USAF/JACC may authorize this claim as an exception to the rule).

[55 FR 2809, Jan. 29, 1990, as amended at 55 FR 32077, Aug. 7, 1990]

### § 842.96 Asserting the claim.

The base SJA asserts the claim against the tort-feasor by mailing, certified mail, return receipt requested, the original and one copy of a ''Notice of Claim'' that includes the following:

(a) Reference to the statutory right to collect.

(b) A demand for payment or restoration.

(c) A description of damage.

(d) The date and place of incident.

(e) The name, phone number, and office address of claims personnel to contact.

### § 842.97 Referring a claim to the US Attorney or the Department of Justice.

All claims must be authorized for referral by HQ USAF/JACC prior to being sent to either the US Attorney or the Department of Justice. All claims for demands of more than $20,000.00 which are not collected in full by a settlement authority will be referred (with HQ USAF/JACC approval) to DOJ.

### § 842.98 Statute of limitations.

The government must file suit within 3 years after the cause of action accrues. It accrues when a responsible US official knew or reasonably should have known the material facts that resulted in the claimed loss.

### § 842.99 Compromise, termination, and suspension of collection.

This section establishes the guidelines for compromise, termination, or suspension of a claim.

(a) Compromise of a claim is allowable when:

(1) The tort-feasor is unable to pay the full amount within a reasonable time. (A sworn statement showing the debtor's assets and liabilities, income, expenses, and insurance coverage should be obtained and included in the claim file).

(2) The Government is unable to collect a claim in full within a reasonable time even though the enforced collection proceedings are used for collection.

(3) The cost to collect does not justify enforced collection of the full amount.

(4) The government may have difficulty proving its case in court for the full amount claimed.

(b) Compromise is not allowable when there may be fraud, misrepresentation, or violation of antitrust laws. The Department of Justice must authorize compromise of such claims.

(c) Termination of collection is allowable when:

(1) The government is unable to collect the debt after exhausting all collection methods.

(2) The government is unable to locate the tort-feasor.

(3) The cost to collect will exceed recovery.

(4) The claim is legally without merit.

(5) The evidence does not substantiate the claim.

(d) Suspension of collection is allowable when:

(1) The government is unable to locate tort-feasor.

(2) The tort-feasor is presently unable to pay but:

(i) The statute of limitations is tolled or is running anew.

(ii) Future collection may be possible.

## Subpart M—Claims Under the National Guard Claims Act (32 U.S.C. 715)

### § 842.100 Scope of this subpart.

This subpart explains how to settle claims against the United States arising out of the noncombat activities of the Air National Guard (ANG), when its members are acting within the scope of their employment and performing duty under 32 U.S.C. Contact HQ USAF/JACC for guidance on any claim for property damage, injury or death by the ANG which accrued prior to 29 December 1981.

**§ 842.101 Definitions.**

(a) *Appeal.* An appeal is a request by the claimant or claimant's authorized agent to reevaluate the final decision made on a claim. A request for reconsideration is considered as an appeal.

(b) *Air National Guard (ANG).* The federally recognized Air National Guard of each state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam.

(c) *ANG member.* An ANG member is one who is performing duty under 32 U.S.C., section 316, 502, 503, 504, or 505 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.

(d) *ANG duty status*—(1) *Active federal service.* ANG members may serve on active Federal duty under 10 U.S.C. to augment the active Air Force under certain circumstances or for certain types of duty or training (e.g., overseas training exercises and ANG alert duty). Duty under 10 U.S.C. does not fall under this subpart.

(2) *Federally funded duty.* ANG members perform specified federally funded duty or training under 32 U.S.C. such as weekend drills, annual training, field exercises, range firing, military schooling, full time unit support, or recruiting duties. Duty under 32 U.S.C. falls under this subpart for noncombat activities.

(3) *State duty.* State duty is duty not authorized by federal law but required by the governor of the state and paid for from state funds. Such duty includes civil emergencies (natural or other disasters), civil disturbances (riots and strikes), and transportation requirements for official state functions, public health, or safety. State duty does not fall under this subpart.

(e) *Compromise.* A compromise is an agreed settlement based upon the facts, the law, and the application of the law to the facts.

(f) *Final denial.* A final denial is a letter from the settlement authority to the claimant or authorized agent advising of the decision to deny the claim.

(g) *Noncombat activity.* Noncombat activity is an act, other than combat, war or armed conflict, which is particularly military in character and has little parallel in the civilian community.

(h) *ANG technicians.* An ANG technician is a Federal employee employed under 32 U.S.C. 709. Tort claims arising out of his or her activity are settled under the Federal Tort Claims Act (FTCA).

**§ 842.102 Delegations of authority.**

This paragraph outlines the levels of authority authorized to settle claims brought under the National Guard Claims Act (32 U.S.C. 715).

(a) *Settlement authority.* (1) The Secretary of the Air Force has authority to:

(i) Settle a claim for $100,000 or less.

(ii) Settle a claim for more than $100,000, paying the first $100,000 and reporting the excess to the General Accounting Office for payment.

(iii) Deny a claim in any amount.

(2) The Judge Advocate General has delegated authority to settle a claim for $100,000 or less, and deny a claim in any amount.

(3) The following individuals have delegated authority to settle a claim for $25,000 or less, and deny a claim in any amount:

(i) The Deputy Judge Advocate General.

(ii) The Director of Civil Law.

(iii) The Chief, Deputy Chief, and Branch Chiefs, Claims and Tort Litigation Staff.

(4) The SJA of 9AF for CENTCOM and the SJAs of USAFE and PACAF have delegated authority to settle claims payable or deny claims filed for $25,000 or less.

(5) SJAs of single base GCMs, GCMs in PACAF and USAFE and each Air Force base, station or fixed installation have delegated authority to settle claims payable, and deny claims filed, for $15,000 or less.

(b) *Redelegation of authority.* A settlement authority may redelegate up to $25,000 of settlement authority to a subordinate judge advocate or civilian attorney. This redelegation must be in writing and can be for all claims or limited to a single claim.

(c) *Appellate authority.* Upon appeal a settlement authority has the same authority to settle a claim as that specified above. However, no appellate authority below the Office of the Secretary of the Air Force may deny an appeal of a claim it previously denied.

(d) *Authority to reduce, withdraw, and restore settlement authority.* Any superior settlement authority may reduce, withdraw, or restore delegated settlement authority.

(e) *Settlement negotiations.* A settlement authority may settle a claim filed in any amount for a sum within the delegated settlement authority regardless of the amount claimed. Unsettled claims in excess of the delegated settlement authority are sent to the individual with higher settlement authority. Unsuccessful negotiations at one level do not bind higher authority.

(f) *Special exceptions.* No authority below the level of HQ USAF/JACC may settle claims for:

(1) Legal malpractice.

(2) On the job personal injury or death of an employee of a government contractor or subcontractor.

(3) Assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution committed by an investigative or law enforcement officer.

### § 842.103 Filing a claim.

This paragraph explains how to file a claim under the National Guard Claims Act.

(a) *How and when filed.* A claim is filed when a federal military agency receives from a claimant or duly authorized agent a properly completed SF 95 or other written and signed demand for money damages in a sum certain. Claims belonging to another agency are promptly transferred to the correct agency.

(b) *Receipt of claims from State National Guard agencies.* The Office of the State Adjutant General promptly sends claims it receives to the appropriate Air Force claims authority in whose geographic area the incident occurred. The report forwarded to the Air Force includes:

(1) The date, place, and nature of the incident.

(2) The names and organizations of ANG members involved, and the statutory duty status of the ANG members at the time of the incident (include copies of orders, if applicable).

(3) A scope of employment statement from the supervisors of the ANG members involved.

(4) The names of the claimants.

(5) A brief description of any damage to private property, personal injuries, or death.

(c) *Claims investigations.* (1) Upon receipt of a claim:

(i) It is investigated by claims office personnel responsible for the geographic area where the incident causing the claim occurred.

(ii) The investigative report includes a scope of employment statement and a copy of the orders authorizing the performance of duty by the ANG member.

(2) The State Adjutants General designate an official or office as point of contact for Air Force claims personnel and furnish necessary personnel to assist the Air Force investigation, subject to the availability of funds and personnel.

(d) *Amending a claim.* A claimant may amend a claim at any time prior to final action. To amend a claim the claimant or his or her authorized agent must submit a written, signed demand.

### § 842.104 Advance payments.

Subpart Q of this part sets forth procedures for such payments.

### § 842.105 Statute of limitations.

A claim must be filed in writing within 2 years after it accrues.

(a) Federal, not state law, determines the time of accrual. A claim accrues when the claimant discovers or reasonably should have discovered the existence of the act that resulted in the claimed loss.

(b) In computing the statutory time period, the day of the incident is excluded and the day the claim was filed is included.

(c) A claim filed after the statute has run is considered if the United States is at war or in an armed conflict when the claim accrues; or if the United States enters a war or armed conflict after the claim accrues, and good cause is shown. No claimant may file a claim

more than 2 years after the good cause ceases to exist or the war or armed conflict ends. Congress or the President establishes the beginning and end of war or armed conflict.

**§842.106 Who may file a claim.**

The following individuals may file a claim under this subpart.

(a) Owners of the property or their authorized agents may file a claim for property damage.

(b) Injured persons or their authorized agents may file a claim for personal injury.

(c) Executors or administrators of a decedent's estate or any other person legally entitled to do so under applicable local law may file a claim based on:

(i) An individual's death.

(ii) A cause of action surviving an individual's death.

(d) Insurers with subrogation rights may file a claim for losses paid in full by them. The parties may file a claim jointly or individually, to the extent of each party's interest, for losses partially paid by insurers with subrogation rights.

(e) Authorized agents signing a claim must show their title or legal capacity and present evidence of such authority to file the claim.

**§842.107 Who are proper claimants.**

Only certain individuals are proper claimants under this subpart. Proper claimants include:

(a) Citizens and inhabitants of the United States.

(b) States or territories and their agencies, unless it is the state of the ANG member who caused the injury or property damage.

(c) Counties, municipalities, or units of local government, unless they are in the state of the ANG member who caused the injury or property damage.

(d) Persons in foreign countries who are not inhabitants of a foreign country.

(e) Property owners, their representatives, and those with certain legal relationships with the record owner, including mortgagors, mortgagees, trustees, bailees, lessees and conditional vendees.

(f) Subrogees, to the extent they have paid the claim.

**§842.108 Who are not proper claimants.**

The following individuals are not proper claimants:

(a) ANG members performing duty under 32 U.S.C. when the personal injury or death claim arises incident to service.

(b) Agencies and departments of the U.S. Government including the District of Columbia government.

(c) Federal nonappropriated fund instrumentalities.

(d) Governments of foreign nations, their agencies, political subdivisions, and municipalities.

(e) The state territory, local government unit, or their agencies, whose ANG member caused the injury or property damage.

(f) Subrogees of all the above.

**§842.109 Claims payable.**

(a) Claims arising from noncombat activities of ANG members performing duty under 32 U.S.C and acting within the scope of their employment, whether or not such injuries or damages arose out of their negligent or wrongful acts or omissions.

(b) Claims are payable if they are for damage to bailed property under §842.109(a) of this part where:

(1) The ANG assumed the duties of a bailee.

(2) The bailor did not assume the risk of loss by express agreement.

(3) Authorized ANG members acting in their official capacity properly accepted the property.

(c) Claims are payable if they are for loss or damage to:

(1) Insured or registered mail, under §842.109 (a) or (b) of this part while in the possession of the ANG.

(2) Minimum fee insured mail but only if it has an insurance number or requirement for hand-to-hand receipt and was lost or damaged while in the possession of the ANG.

(3) Any mail in the possession of the United States Postal Service or a Military Postal Service due to an unlawful or negligent inspection, search, or seizure in an oversea military postal facility, which was ordered by ANG members.

(d) Claims filed by ANG military or civilian health care providers or legal

personnel for their personal liability by settlement or judgement, to include reasonable costs of such litigation, for their common law tortious acts committed on or after 29 Dec 1981 while performing title 32 duty within the scope of their employment under the circumstances described in 10 U.S.C. 1089(f) and 10 U.S.C. 1054(f).

[55 FR 2809, Jan. 29, 1990, as amended at 55 FR 32077, Aug. 7, 1990]

### § 842.110 Claims not payable.

The following are not payable:

(a) Claims payable under any one of the following statutes and implementing regulations:

(1) The Federal Tort Claims Act (FTCA).

(2) The Foreign Claims Act (FCA).

(3) The International Agreements Claims Act.

(4) The Air Force Admiralty Claims Act and the Admiralty Extensions Act.

(5) The Military Claims Act (MCA).

(6) The Military Personnel and Civilian Employees' Claims Act.

(b) Claims from the combat activities of the armed forces during war or armed conflict.

(c) Claims for personal injury or death of ANG members performing duty under 32 U.S.C. incident to their service.

(d) Claims for damage to or loss of bailed property when the bailor specifically assumed such risk.

(e) Claims for personal injury or death of a person covered by:

(1) The Federal Employees' Compensation Act.

(2) The Longshore and Harbor Workers' Compensation Act.

(3) A United States contract or agreement providing employee benefits through insurance, local law, or custom and the United States pays for such benefits either directly or as a part of the consideration under the contract.

(f) Claims for property damage, personal injury or death occurring in a foreign country to an inhabitant of that country.

(g) Claims caused by the negligent or wrongful acts or omissions of members of the District of Columbia ANG.

(h) Claims arising from a private rather than a government transaction.

(i) Claims for patent or copyright infringement.

(j) Claims for damage, use, or other expenses involving the regular acquisition, possession, and disposition of real property by or for the ANG.

(k) Claims for the taking of private real property by a continuing trespass or by a technical trespass such as overflights of aircraft.

(l) Claims for loss of rental fee for personal property.

(m) Claims in litigation against the United States.

(n) Claims for a maritime occurrence covered under U.S. admiralty laws.

(o) Claims for:

(1) Any tax or customs duty.

(2) The detention of any goods or merchandise by any officer of customs, excise, or law enforcement officer.

(p) Claims from an act or omission of any employee of the Government while administering the provisions of the Trading With the Enemy Act.

(q) Claims for damages caused by the United States' imposition or establishment of a quarantine.

(r) Claims for libel, slander, misrepresentation, deceit or interference with contract rights.

(s) Claims that result wholly from the negligent or wrongful act of the claimant or the claimant's agent.

(t) Claims for reimbursement of medical, hospital, or burial expenses furnished at the expense of the United States, any state, the District of Columbia, or Puerto Rico.

(u) Claims for damage from floods or flood waters.

(v) Claims for damages caused by the fiscal operations of the Treasury or by regulation of the monetary system.

(w) Claims caused by the negligent or wrongful acts or omissions of ANG members acting within the scope of their employment, while performing duty under 32 U.S.C., on or after 29 December 1981.

(x) Claims caused by the negligent or wrongful acts or omissions of ANG technicians employed under 32 U.S.C. 709.

### § 842.111 Applicable law.

(a) *Extent of liability*. The following rules apply to determine the extent of liability of a claim.

(1) *Claims arising in the United States.* The law of the place where the act or omission occurs governs liability. The local law on dangerous instrumentalities, assumption of risk, res ipsa loquitur, last clear chance, discovered peril, and comparative and contributory negligence are considered. Absolute liability is never imposed.

(2) *Claims arising in foreign countries.* The general principles of tort law common to the majority of American jurisdictions as evidenced by Federal case law and standard legal publications, control liability, except that absolute liability is not imposed. However, the law of the place where the act or omission occurs governs the effect of the claimant's comparative or contributory negligence. Where applicable, rules of the road and similar locally prescribed standards of care are followed to determine fault.

NOTE: ANG personnel ordered to foreign countries proceed under title 10, U.S.C.; consequently, the National Guard Claims Act would not apply. However, there may be cases where ANG personnel are inadvertently in a foreign country while on title 32, U.S.C. orders.

(b) *Measure of damages.* The following rules apply to the measurement of damages.

(1) Normally, the law of the place where the act or omission occurs is applied. In claims arising in foreign countries, the measure of damages is determined in accordance with general principles of American tort law.

(2) Damages in suits against private persons are apportioned if local law applies comparative negligence.

(3) Proceeds from private insurance policies are not deducted except to the extent the policy was paid by the Government or is allowed by local law.

(4) Compensation and benefits from any U.S. Government associated source are deducted. However, sick and annual leave payments are deducted only if allowed by local law.

(5) The following are not payable:

(i) Punitive damages.

(ii) Cost of medical or hospital services furnished at U.S. expense.

(iii) Cost of burial expenses paid by the United States, any territory or possession, any state, or the District of Columbia.

(c) *Settlement by insurer or joint tort-feasor.* 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

### Subpart A—General Provisions

Sec.
855.1 Policy.
855.2 Responsibilities.
855.3 Applicability.

### Subpart B—Civil Aircraft Landing Permits

855.4 Scope.
855.5 Responsibilities and authorities.
855.6 Aircraft exempt from the requirement for a civil aircraft landing permit.
855.7 Conditions for use of Air Force airfields.
855.8 Application procedures.
855.9 Permit renewal.
855.10 Purpose of use.
855.11 Insurance requirements.
855.12 Processing a permit application.
855.13 Civil fly-ins.
855.14 Unauthorized landings.
855.15 Detaining an aircraft.
855.16 Parking and storage.
855.17 Fees for landing, parking, and storage fees.
855.18 Aviation fuel and oil purchases.
855.19 Supply and service charges.

### Subpart C—Agreements for Civil Aircraft Use of Air Force Airfields

855.20 Joint-use Agreements.
855.21 Procedures for sponsor.
855.22 Air Force procedures.
855.23 Other agreements.
Table 1—Purpose of Use/Verification/Approval Authority/Fees
Table 2—Aircraft Liability Coverage Requirements
Table 3—Landing Fees
Table 4—Parking and Storage Fees
Attachment 1 to Part 855—Glossary of References, Abbreviations, Acronyms, and Terms
Attachment 2 to Part 855—Weather Alternate List
Attachment 3 to Part 855—Landing Permit Application Instructions
Attachment 4 to Part 855—Sample Joint-Use Agreement
Attachment 5 to Part 855—Sample Temporary Agreement

AUTHORITY: 49 U.S.C. 44502 and 47103.

SOURCE: 60 FR 37349, July 20, 1995, unless otherwise noted.

### Subpart A—General Provisions

#### § 855.1 Policy.

The Air Force establishes and uses its airfields to support the scope and level of operations necessary to carry out missions worldwide. The Congress funds airfields in response to Air Force requirements, but also specifies that civil aviation access is a national priority to be accommodated when it does not jeopardize an installation's military utility. The Air Force engages in dialogue with the civil aviation community and the Federal Aviation Administration to ensure mutual understanding of long-term needs for the national air transportation system and programmed military force structure requirements. To implement the national policy and to respond to requests for access, the Air Force must have policies that balance such requests with military needs. Civil aircraft access to Air Force airfields on foreign territory requires host nation approval.

(a) The Air Force will manage two programs that are generally used to grant civil aircraft access to its airfields: civil aircraft landing permits and joint-use agreements. Other arrangements for access will be negotiated as required for specific purposes.

(1) Normally, landing permits will be issued only for civil aircraft operating in support of official Government business. Other types of use may be authorized if justified by exceptional circumstances. Access will be granted on an equitable basis.

(2) The Air Force will consider only proposals for joint use that do not compromise operations, security, readiness, safety, environment, and quality of life. Further, only proposals submitted by authorized local Government representatives eligible to sponsor a public airport will be given the comprehensive evaluation required to conclude a joint-use agreement.

(3) Any aircraft operator with an inflight emergency may land at any

Air Force airfield without prior authorization. An inflight emergency is defined as a situation that makes continued flight hazardous.

(b) Air Force requirements will take precedence on Air Force airfields over all civil aircraft operations, whether they were previously authorized or not.

(c) Civil aircraft use of Air Force airfields in the United States will be subject to Federal laws and regulations. Civil aircraft use of Air Force airfields in foreign countries will be subject to US Federal laws and regulations that have extraterritorial effect and to applicable international agreements with the country in which the Air Force installation is located.

### §855.2 Responsibilities.

(a) As the program manager for joint use, the Civil Aviation Branch, Bases and Units Division, Directorate of Operations (HQ USAF/XOOBC), ensures that all impacts have been considered and addressed before forwarding a joint-use proposal or agreement to the Deputy Assistant Secretary for Installations (SAF/MII), who holds decision authority. All decisions are subject to the environmental impact analysis process as directed by the Environmental Planning Division, Directorate of Environment (HQ USAF/CEVP), and the Deputy Assistant Secretary for Environment, Safety, and Occupational Health (SAF/MIQ). The Air Force Real Estate Agency (AFREA/MI) handles the leases for Air Force-owned land or facilities that may be included in an agreement for joint use.

(b) HQ USAF/XOOBC determines the level of decision authority for landing permits. It delegates decision authority for certain types of use to major commands and installation commanders.

(c) HQ USAF/XOOBC makes the decisions on all requests for exceptions or waivers to this part and related Air Force instructions. The decision process includes consultation with other affected functional area managers when required. Potential impacts on current and future Air Force policies and operations strongly influence such decisions.

(d) Major commands, direct reporting units, and field operating agencies may issue supplements to establish command-unique procedures permitted by and consistent with this part.

### §855.3 Applicability.

This part applies to all regular United States Air Force (USAF), Air National Guard (ANG), and United States Air Force Reserve (USAFR) installations with airfields. This part also applies to civil aircraft use of Air Force ramps at civil airports hosting USAF, ANG, and USAFR units.

## Subpart B—Civil Aircraft Landing Permits

### §855.4 Scope.

Air Force airfields are available for use by civil aircraft so far as such use does not interfere with military operations or jeopardize the military utility of the installation. Access will be granted on an equitable basis. Air Force requirements take precedence over authorized civil aircraft use. This part carries the force of US law, and exceptions are not authorized without prior approval from the Civil Aviation Branch, Bases and Units Division, Directorate of Operations, (HQ USAF/XOOBC), 1480 Air Force Pentagon, Washington DC 20330–1480. Proposed exceptions or waivers are evaluated as to current and future impact on Air Force policy and operations.

### §855.5 Responsibilities and authorities.

(a) The Air Force:

(1) Determines whether civil aircraft use of Air Force airfields is compatible with current and planned military activities.

(2) Normally authorizes civil aircraft use of Air Force airfields only in support of official Government business. If exceptional circumstances warrant, use for other purposes may be authorized.

(3) Acts as clearing authority for civil aircraft use of Air Force airfields, subject to the laws and regulations of the US, or to applicable international agreements (e.g., status of forces agreements) with the country in which the Air Force installation is located.

(4) Reserves the right to suspend any operation that is inconsistent with national defense interests or deemed not in the best interests of the Air Force.

(5) Will terminate authority to use an Air Force airfield if the:

(i) User's liability insurance is canceled.

(ii) User lands for other than the approved purpose of use or is otherwise in violation of this part or clearances and directives hereunder.

(6) Will not authorize use of Air Force airfields:

(i) In competition with civil airports by providing services or facilities that are already available in the private sector.

NOTE: Use to conduct business with or for the US Government is not considered as competition with civil airports.

(ii) Solely for the convenience of passengers or aircraft operator.

(iii) Solely for transient aircraft servicing.

(iv) By civil aircraft that do not meet US Department of Transportation operating and airworthiness standards.

(v) That selectively promotes, benefits, or favors a specific commercial venture unless equitable consideration is available to all potential users in like circumstances.

(vi) For unsolicited proposals in procuring Government business or contracts.

(vii) Solely for customs-handling purposes.

(viii) When the air traffic control tower and base operations are closed or when a runway is restricted from use by all aircraft.

NOTE: Requests for waiver of this provision must address liability responsibility, emergency response, and security.

(7) Will not authorize civil aircraft use of Air Force ramps located on civil airfields.

NOTE: This section does not apply to use of aero club facilities located on Air Force land at civil airports, or civil aircraft chartered by US military departments and authorized use of terminal facilities and ground handling services on the Air Force ramp. Only the DD Form 2400, Civil Aircraft Certificate of Insurance, and DD Form 2402, Civil Aircraft Hold Harmless Agreement, are required for use of Air Force ramps on civil airfields.

(b) Civil aircraft operators must:

(1) Have an approved DD Form 2401, Civil Aircraft Landing Permit, before operating at Air Force airfields, except for emergency use and as indicated in paragraphs (d)(2) and (d)(2)(iii)(E) of this section, and , and § 855.13(b)(1)(ii).

(2) Ensure that pavement load-bearing capacity will support the aircraft to be operated at the Air Force airfield.

(3) Ensure that aircraft to be operated at Air Force airfields are equipped with an operating two-way radio capable of communicating with the air traffic control tower.

(4) Obtain final approval for landing from the installation commander or a designated representative (normally base operations) at least 24 hours prior to arrival.

(5) Not assume that the landing clearance granted by an air traffic control tower facility is a substitute for either the approved civil aircraft landing permit or approval from the installation commander or a designated representative (normally base operations).

(6) Obtain required diplomatic or overflight clearance before operating in foreign airspace.

(7) Pay applicable costs and fees.

(8) File a flight plan before departing the Air Force airfield.

(c) The installation commander or a designated representative:

(1) Exercises administrative and security control over both the aircraft and passengers while on the installation.

(2) May require civil users to delay, reschedule, or reroute aircraft arrivals or departures to preclude interference with military activities.

(3) Cooperates with customs, immigration, health, and other public authorities in connection with civil aircraft arrival and departure.

(d) Decision Authority: The authority to grant civil aircraft use of Air Force airfields is vested in:

(1) Directorate of Operations, Bases and Units Division, Civil Aviation Branch (HQ USAF/XOOBC). HQ USAF/XOOBC may act on any request for civil aircraft use of an Air Force airfield. Decision authority for the following will not be delegated below HQ USAF:

(i) Use of multiple Air Force airfields except as designated in paragraph (d)(2) of this section.

(ii) Those designated as 2 under Approval Authority in Table 1 to this part.

(iii) Any unusual or unique purpose of use not specifically addressed in this part.

(2) Major Command, Field Operating Agency, Direct Reporting Unit, or Installation Commander. With the exception of those uses specifically delegated to another decision authority, major commands (MAJCOMs), field operating agencies (FOAs), direct reporting units (DRUs) and installation commanders or designated representatives have the authority to approve or disapprove civil aircraft landing permit applications (DD Forms 2400, Civil Aircraft Certificate of Insurance; 2401; Civil Aircraft Landing Permit, and 2402, Civil Aircraft Hold Harmless Agreement) at airfields for which they hold oversight responsibilities. Additionally, for expeditious handling of short notice requests, they may grant requests for one-time, official Government business flights that are in the best interest of the US Government and do not violate other provisions of this part. As a minimum, for one-time flights authorized under this section, the aircraft owner or operator must provide the decision authority with insurance verification and a completed DD Form 2402 before the aircraft operates into the Air Force airfield. Air Force authority to approve civil aircraft use of Air Force airfields on foreign soil may be limited. Commanders outside the US must be familiar with base rights agreements or other international agreements that may render inapplicable, in part or in whole, provisions of this part. Decision authority is delegated for specific purposes of use and or locations as follows:

(i) Commander, 611th Air Operations Group (AOG). The Commander, 611th AOG or a designated representative may approve commercial charters, on a case-by-case basis, at all Air Force airfields in Alaska, except Eielson and Elmendorf AFBs, if the purpose of the charter is to transport goods and or materials, such as an electric generator or construction materials for a community center, for the benefit of remote communities that do not have adequate civil airports.

(ii) Commander, Air Mobility Command (AMC). The Commander, AMC or a designated representative may approve permits that grant landing rights at Air Force airfields worldwide in support of AMC contracts.

(iii) US Defense Attache Office (USDAO). The USDAO, acting on behalf of HQ USAF/XOOBC, may grant a request for one-time landing rights at an Air Force airfield provided:

(A) The request is for official Government business of either the US or the country to which the USDAO is accredited.

(B) The Air Force airfield is located within the country to which the USDAO is accredited.

(C) Approval will not violate any agreement with the host country.

(D) The installation commander concurs.

(E) The USDAO has a properly completed DD Form 2402 on file and has verified that the insurance coverage meets the requirements of Table 2 to this part, before the aircraft operates into the Air Force airfield.

### §855.6 Aircraft exempt from the requirement for a civil aircraft landing permit.

(a) Any aircraft owned by:

(1) Any other US Government agency.

(2) US Air Force aero clubs established as prescribed in AFI 34–117, Air Force Aero Club Program, and AFMAN 3–132, Air Force Aero Club Operations[1].

NOTE: This includes aircraft owned by individuals but leased by an Air Force aero club.

(3) Aero clubs of other US military services.

NOTE: This includes aircraft owned by individuals but leased by Army or Navy aero clubs.

(4) A US State, County, Municipality, or other political subdivision, when operating to support official business at any level of Government.

(b) Any civil aircraft under:

(1) Lease or contractual agreement for exclusive US Government use on a

[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.

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 Forms 2401 that are covered by a single DD Form 2400 and DD Form 2402.)

[2] See footnote 1 to § 855.6.

### §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.

### § 855.14 Unauthorized landings.

(a) *Unauthorized landing procedures.* The installation commander or a designated representative will identify an

[3] See footnote 1 to § 855.6.

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.

(d) *Intentional unauthorized landings.* (1) The installation commander may categorize an unauthorized landing as intentional when there is unequivocal evidence that the pilot deliberately:

[4] See footnote 1 to §855.6.

(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 (FAA) Regional Office within the geographical area where the installation is located. AFI 13–201, Air Force Airspace

[5] See footnote 1 to §855.6.
[6] See footnote 1 to §855.6.
[7] See footnote 1 to §855.6.

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 on environmental analysis requirements is available from HQ USAF/CEVP, 1260 Air Force Pentagon, Washington DC 20330–1260.

[8] See footnote 1 to § 855.6.

[9] See footnote 1 to § 855.6.

(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:<br>a. a suitable civil airport,<br>b. aircraft that could operate into the local civil airport, or<br>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:*<br>*a. Emergencies.*<br>*b. Weather alternates.*<br>*c. Air taxi operations under FAR, Part 135. Note: This is currently under review. Anticipate a change that will eliminate the air taxi exemption.*<br>*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:<br>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.<br>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.<br>d. US Government FMS case management agency to which costs for services rendered are chargeable.<br>e. Name, address, and telephone number of freight forwarder.<br>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:<br>a. Provide minimum official welcoming party.<br>b. Not provide special facilities.<br>c. Not permit political rallies or speeches on the installation.<br>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. |
| | 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

ALTUS AFB OK
ANDERSEN AFB GUAM
CANNON AFB NM
DOBBINS AFB GA
DYESS AFB TX
EARECKSON AFS AK*
EGLIN AFB FL
EIELSON AFB AK
ELLSWORTH AFB SD
ELMENDORF AFB AK
FAIRCHILD AFB WA
GRAND FORKS AFB ND
HILL AFB UT
HOWARD AFB PA
KADENA AB OKINAWA
KELLY AFB TX
KUNSAN AB KOREA
LANGLEY AFB VA
LAUGHLIN AFB TX
MALMSTROM AFB MT
McCHORD AFB WA
McCONNELL AFB KS
MINOT AFB ND
MT HOME AFB ID
NELLIS AFB NV
OFFUTT AFB NE
OSAN AB KOREA
PLANT 42, PALMDALE CA
TRAVIS AFB CA
TYNDALL AFB FL
YOKOTA AB JAPAN

## ATTACHMENT 3 TO PART 855—LANDING PERMIT APPLICATION INSTRUCTIONS

A3.1. DD Form 2400, Civil Aircraft Certificate of Insurance: The insurance company or its authorized agent must complete and sign the DD Form 2400. Corrections to the form made using a different typewriter, pen, or whiteout must be initialed by the signatory. THE FORM CANNOT BE COMPLETED BY THE AIRCRAFT OWNER OR OPERATOR. Upon expiration, the DD Form 2400 must be resubmitted along with DD Form 2401 for continued use of Air Force airfields. The DD Form 2400 may be submitted to the decision authority by either the user or insurer. (Approved by the Office of Management and Budget under control number 0701–0050).

A3.1.1. Block 1, Date Issued. The date the DD Form 2400 is completed by the signatory.

A3.1.2. Block 2a and 2b, Insurer Name, Address. The name and address of the insurance company.

A3.1.3. Block 3a and 3b. Insured Name, Address. The name and address of the aircraft owner and or operator. (The name of the user must be the same on all the forms.)

A3.1.4. Block 4a, Policy Number(s). The policy number must be provided. Binder numbers or other assigned numbers will not be accepted in lieu of the policy number.

A3.1.5. Block 4b, Effective Date. The first day of current insurance coverage.

A3.1.6. Block 4c, Expiration Date. The last day of current insurance coverage. The DD Form 2400 is valid until one day before the insurance expiration date. A DD Form 2400 with the statement ''until canceled,'' in lieu of a specific expiration date, is valid for two years from the issue date.

A3.1.7. Block 5, Aircraft Liability Coverage. The amount of split limit coverage. All boxes in block 5 must be completed to specify the coverage for: each person (top line, left to right) outside the aircraft (bodily injury) and each passenger; and the total coverage per accident (second line, left to right) for: persons outside the aircraft (bodily injury), property damage, and passengers. IF BLOCK 5 IS USED, BLOCK 6 SHOULD NOT BE USED. All coverages must be stated in US dollars. ALL SEATS THAT CAN BE USED FOR PASSENGERS MUST BE INSURED. See Table 2 for required minimum coverage.

A3.1.8. Block 6, Single Limit. The maximum amount of coverage per accident. IF BLOCK 6 IS USED, BLOCK 5 SHOULD NOT BE USED. The minimum coverage required for a combined single limit is determined by adding the minimums specified in the ''each accident'' line of Table 2. All coverages must be stated in US dollars. ALL SEATS THAT CAN BE USED FOR PASSENGERS MUST BE INSURED.

A3.1.9. Block 7, Excess Liability. The amount of coverage which exceeds primary

*Formerly Shemya AFB.

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]

# SUBCHAPTER G—ORGANIZATION AND MISSION—GENERAL

## PART 865—PERSONNEL REVIEW BOARDS

### Subpart A—Air Force Board for Correction of Military Records


Sec.
865.0 Purpose.
865.1 Setup of the Board.
865.2 Board responsibilities.
865.3 Application procedures.
865.4 Board actions.
865.5 Decision of the Secretary of the Air Force.
865.6 Reconsideration of applications.
865.7 Action after final decision.
865.8 Miscellaneous provisions.


### Subpart B—Air Force Discharge Review Board


865.100 Purpose.
865.101 References.
865.102 Statutory authority.
865.103 Definition of terms.
865.104 Secretarial responsibilities.
865.105 Jurisdiction and authority.
865.106 Application for review.
865.107 DRB composition and meeting location.
865.108 Availability of records and documents.
865.109 Procedures for hearings.
865.110 Decision process.
865.111 Response to items submitted as issues by the applicant.
865.112 Decisional issues.
865.113 Recommendations by the Director of the Personnel Council and Secretarial Review Authority.
865.114 Decisional document.
865.115 Issuance of decisions following discharge review.
865.116 Records of DRB proceeding.
865.117 Final disposition of the record of proceedings.
865.118 Availability of Discharge Review Board documents for public inspection and copying.
865.119 Privacy Act information.
865.120 Discharge review standards.
865.121 Complaints concerning decisional documents and index entries.
865.122 Summary of statistics for Discharge Review Board.
865.123 Approval of exceptions to directive.
865.124 Procedures for regional hearings.
865.125 Report requirement.
865.126 Sample report format.


## Subpart A—Air Force Board for Correction of Military Records

SOURCE: 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 GROUPS

Sec.
881.1 Applying for discharge.
881.2 Screening the application.
881.3 Individual service review board.
881.4 Processing the application.
881.5 If an application is approved.
881.6 If an application is denied.
881.7 Discharge upgrade.
881.8 Disposition of documents.
881.9 Form prescribed.
APPENDIX A TO PART 881—GLOSSARY OF TERMS

AUTHORITY: 38 U.S.C. 106.

SOURCE: 64 FR 33400, June 23, 1999, unless otherwise noted.

### § 881.1 Applying for discharge.

(a) Who may apply.

(1) You may apply for discharge if you were a member of a recognized group. A spouse, next of kin, or legal representative may apply on behalf of a deceased or mentally incompetent person. Proof of death or mental incompetency must accompany such an application.

(b) Where to apply.

(1) Send your application for discharge to the Directorate of Personnel Program Management, Separations Branch, HQ AFPC/DPPRS, 550 C Street West, Suite 11, Randolph AFB, TX 78150–4713.

(c) How to apply.

(1) Fill out DD Form 2168, *Application for Discharge of Member or Survivor of Member of Group Certified to Have Performed Active Duty With the Armed Forces of the U.S.*, or write a letter.

(2) Obtain DD Form 2168 from HQ AFPC/DPRS, 550 C Street West, Suite 11, Randolph AFB, TX 78150–4713 or the National Personnel Records Center (NPRC), 9700 Page Boulevard, St. Louis, MO 63132.

(3) Make your application as complete as possible; the burden of proof is on you. Provide all available evidence to document your membership in the group and what services you performed.

(d) Documentation may include:

(1) Flight logbooks.

(2) Separation or discharge certificates.

(3) Mission orders.

(4) Identification cards.

(5) Contracts.

(6) Personnel action forms.

(7) Employment records.

(8) Education certificates and diplomas.

(9) Pay vouchers.

(10) Certificates of awards.

(11) Casualty information.

(e) The Air Force will not under any circumstances provide or pay for legal representation for you.

### § 881.2 Screening the applications.

(a) HQ AFPC/DPPRS reviews your application and does one of the following:

(1) Refers your application to another military department and sends you a written notice or a copy of the referral letter.

(2) Returns your application without prejudice if the Secretary of the Air Force has not determined whether members of your group are certified for discharge. You may resubmit the application after the Secretary determines that your group is certified.

(3) Refers applications made by a group (or individuals on behalf of a group) to the Secretary of the Air Force, Manpower, Reserve Affairs and installations, Personnel Council (AFPC), The Pentagon, Washington, DC 20330 for further review. This Part does not cover such applications.

(4) Returns the application to you if it is complete.

(5) Refers all complete applications to the Individual Service Review Board for further consideration.

### § 881.3 Individual Service Review Board.

(a) The Commander, Headquarters Air Force Personnel Center (HQ AFPC/CC) establishes the Individual Service Review Board as necessary.

(b) The Board consists of military members in grade Lieutenant Colonel

or higher, and civilian members, grade GS–12 or higher, appointed by the HQ AFPC/CC. Three members constitute a quorum. The senior member acts as Board chairperson. A nonvoting member keeps a record of the Board's actions on an application.

(c) The Directorate of Personnel Program Management, Separations Branch, HQ AFPC/DPPRS, 550 C Street West, Suite 11, Randolph AFB, TX 78150–4713, provides administrative support to the Board.

### §881.4 Processing the application.

(a) Individual Service Review Board meets in closed session to consider the application, the evidence submitted, and other relevant information. Applicants or their representatives do not have the right to appear before the Board.

(b) The Board:

(1) Evaluates the evidence.

(2) Decides whether the applicant was a member of a recognized group during dates of its qualification.

(3) Decides whether to approve the application for discharge.

(4) Determines the period and character of the applicant's service.

### §881.5 If an application is approved.

(a) If the Board approves an application for discharge and determines that it should be honorable, HQ AFPC/DPPRSO issues the applicant a DD Form 256AF, Honorable Discharge, and a DD Form 214, *Certificate of Release or Discharge from Active Duty* under AFI 36–3202, *Separation Documents* (formerly AFR 35–6).

(b) Enter a military grade on the DD Form 214 only if the Administrator of Veterans' Affairs requests it.

(c) Enter a pay grade on the DD Form 214 only for individuals who were killed or received service-related injuries or disease during the approved period of service. For proof of grade criteria, see DoD 1000.20, *Determinations of Active Military Service and Discharge Civilian or Contractual Personnel,* section E, paragraph 3g.

(d) If the Board approves an application for discharge but determines that it should be ''under honorable conditions'' (general discharge), it forwards the case to the Air Force Personnel Council (AFPC) for final decision. HQ AFPC/DPPRSO, 550 C Street West, Suite 20, Randolph AFB, TX 78150–4722, then issues the appropriate discharge certificate and a DD Form 214 to the applicant.

(e) To appeal the characterization of a discharge, submit DD Form 149, *Application for Correction of Military Record Under the Provisions of Title 10, U.S.C., Section 1552,* to the Secretary of the Air Force through the Air Force Review Boards Office (SAF/MIBR).

(f) If the member dies or is declared missing during the period of equivalent active military duty, the Directorate of Casualty Matters (HQ AFPC/DPW) issues DD Form 1300, *Report of Casualty,* including military pay grade, to the next of kin or a designated representative, according to DODI 1300.18, *Military Personnel Casualty Matters, Policies and Procedures,* and AFI 36–3002, *Casualty Services* (formerly AFR 30–25).

### §881.6 If an application is denied.

(a) Once the Board has decided your case, HQ AFPC/DPPRS notifies you:

(1) If the Board denied your application for discharge because there is insufficient evidence to show that you belonged to a qualifying group.

(2) If the Board determines that your service cannot be characterized as ''under honorable conditions.''

(b) You have 60 days from the date of this notice to submit additional evidence or information to HQ AFPC/DPPRS, 550 C Street West, Suite 11, Randolph AFB, TX 78150–4713.

(c) If after 60 days you have submitted new evidence, the Board reviews the case again. If the Board determines that your application now merits approval, it proceeds according to paragraph (e).

(d) If you do not submit additional evidence or if, after review, the Board determines that your application should be denied, it forwards the case to the AFPC for final decision.

(e) HQ AFPC/DPPRS notifies you of the final decision.

(f) If your application is denied, the Board returns it to you without prejudicing any later consideration.

### § 881.7 Discharge upgrade.

If you are approved for a General Discharge, you may apply to the Air Force Discharge Review Board for discharge upgrade under AFI 36–3201, *Air Force Discharge Review Board* (formerly AFR 20–10) or to the Air Force Board for Correction of Military Records under AFI 36–2603, *Air Force Board for Correction of Military Records* (formerly AFR 31–3). SAF/MIBR provides copies of these instructions and application forms to individuals who received a General Discharge.

### § 881.8 Disposition of documents.

(a) File a copy of the application, supporting evidence, and DD Form 214 in the Master Personnel Records Groups maintained at the National Personnel Records Center, St. Louis, MO 63132, for approved cases. Send copies of DD Form 214 to:

(1) The applicant.

(2) The Veterans' Administration.

(3) HQ AFPC/DPPRS, 550 C Street West, Suite 11, Randolph AFB, TX 78150–4713.

### § 881.9 Form prescribed.

The following form, DD Form 2168, *Application for Discharge of Member or Survivor of Member of a Group Certified To Have Performed Active Duty With the Armed Forces of the U.S.*, is required for processing the stated claims.

## APPENDIX A TO PART 881—GLOSSARY OF TERMS

*Active Military Service*—See 38 U.S.C. 106.

*Civilian or Contractual Group*—An organization whose members rendered service to the U.S. Air Force or a predecessor organization during a period of armed conflict. In that capacity the members were considered civilian employees with the Armed Forces or contractors with the U.S. Government, providing direct support to the Armed Forces. An example of such a group is the Women's Air Force Service Pilots, who were Federal civilian employees attached to the U.S. Army Air Force during World War II.

*Discharge*—Complete severance from the active military service. The discharge includes a reason and characterization of service.

*Recognized Group*—A group whose service the Secretary of the Air Force has determined was ''active duty for the purposes of all laws administered by the Department of Veterans' Affairs,'' such as VA benefits under 38 U.S.C. 106.

# PART 884—MAKING MILITARY PERSONNEL, EMPLOYEES, AND DEPENDENTS AVAILABLE TO CIVILIAN AUTHORITIES FOR TRIAL

Sec.
884.0 Purpose.

**Subpart A—General Provisions**

884.1 Authority for delivery of Air Force military personnel.
884.2 Requests under the Interstate Agreement on Detainers Act.
884.3 Release on bail or recognizance.
884.4 Placing member under restraint pending delivery.
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.

**Subpart B—Requests by Authorities for Military Personnel Stationed Within the United States and its Possessions**

884.6 Policy on delivery.
884.7 Delivery to federal authorities.
884.8 Requests by authorities of the state in which the member requested is located.
884.9 Request for delivery by authorities of any state in which the member requested is not located.

**Subpart C—Requests for Custody of Members Stationed Outside the United States**

884.10 Air Force policy.
884.11 Assigned responsibilities.
884.12 Procedures for return of an Air Force member to the United States.
884.13 Delays in returning members of the United States.
884.14 Denials of a request for return of a member to the United States.

**Subpart D—Compliance with Court Orders by Civilian Employees and Dependents**

884.15 Policy on complying.
884.16 Procedure involving a request by federal or state authorities for custody of an overseas civilian employee or a command sponsored dependent.
884.17 Reporting requests for assistance and action.
884.18 Format letter.

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.

### § 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

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

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.

[2] See footnote 1 in §884.3.

(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 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,

[3] See footnote 1 in § 884.3.

(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, 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.
887.1 Explanation of terms.
887.2 Safeguarding certificates.
887.3 Persons authorized CILs.
887.4 Requesting CILs.
887.5 Issuing CILs.
887.6 Who must sign CILs.
887.7 Persons separated under other than honorable conditions (undesirable or bad conduct) or dishonorable discharge.
887.8 Where to apply for certificates.
887.9 Furnishing photocopies of documents.

AUTHORITY: 10 U.S.C. 1041.

SOURCE: 53 FR 876, Jan. 14, 1988, unless otherwise noted.

### §887.0 Purpose.

This part tells who may apply for a certificate in lieu of a lost or destroyed certificate of separation. It explains where and how to apply. It implements 10 U.S.C. 1041 and DOD Instruction 1332.13, December 23, 1968. This publication applies to ANG and USAFR members. It authorizes collection of information protected by the Privacy Act of 1974. The authority to collect the information is title 10, U.S.C. 8912 and Executive Order 9397. Each form used to collect personal information has an associated Privacy Act Statement that will be given to the individual before information is collected. System of records notice F035 AF MP C, Military Personnel Records System, applies.

### §887.1 Explanation of terms.

(a) *Certificate in lieu (CIL).* A certificate issued in lieu of a lost or destroyed certificate of service, discharge, or retirement.

(b) *Service person.* One who:

(1) Is currently serving as a member of the Air Force; or

(2) Formerly served in the active military service as a member of the Air Force and all military affiliation was terminated after September 25, 1947.

(c) *Surviving spouse.* A survivor who was legally married to a member of the service at the time of the member's death.

(d) *Guardian.* A person or group of persons legally placed in charge of the affairs of a service member adjudicated mentally incompetent.

### §887.2 Safeguarding certificates.

Certificates of separation are important personal documents. Processing applications for CILs is costly to the Air Force. To keep requests for CILs at a minimum:

(a) Personnel officers will tell members of the importance of safeguarding the original certificates.

(b) Persons who issue CILs will type or stamp across the lower margin ''THIS IS AN IMPORTANT RECORD—SAFEGUARD IT'' (if it is not printed on the certificate).

NOTE: Do not show this legend on DD Form 363AF, Certificate of Retirement.

### § 887.3 Persons authorized CILs.

CILs may be issued only to:

(a) A service member whose character of service was honorable or under honorable conditions.

(b) A surviving spouse.

(c) A guardian, when a duly certified or otherwise authenticated copy of the court order of appointment is sent with the application.

### § 887.4 Requesting CILs.

(a) Standard Form 180 (SF 180), Request Pertaining to Military Records, should be used by persons who had service as shown in § 887.3(a). However, a letter request, with sufficient identifying data and proof that the original certificate of separation was lost or destroyed, may be used. Members on active duty will forward their applications through their unit commander.

(b) SF 180, or any similar form used by agencies outside the Department of Defense, will be used by persons shown in § 887.3(b), (c), and § 887.7.

NOTE: Persons authorized CILs may be assisted in their request by the Customer Service Unit (DPMAC) in the consolidated base personnel office.

### § 887.5 Issuing CILs.

The issuing authority makes sure that the proper CIL form is issued, particularly if the service member has had service in both the Army and Air Force. The assignment status as of September 26, 1947 determines if the person was in the Army or Air Force at the time of discharge or release from active duty. Separations that took place on or before September 25, 1947 are considered Army separations. Those that took place on or after September 26, 1947 are considered Air Force separations, unless the records clearly show the person actually served as a member of the Army during the period of service for which the CIL is requested. Individuals indicated in § 887.3 may be issued CILs prepared on one of the following forms:

(a) DD Form 303AF, Certificate in Lieu of Lost or Destroyed Discharge, is used to replace any lost or destroyed certificate of discharge from the Air Force.

(b) DD Form 363AF, Certificate of Retirement, is used to replace any lost or destroyed certificate of retirement from the Air Force (issued only to service members).

(c) AF Form 386, Certificate in Lieu of Lost or Destroyed Discharge (AUS), is used to replace any lost or destroyed certificate of discharge from the Army.

(d) AF Form 681, Certificate in Lieu of Lost or Destroyed Certificate of Service (AUS), is used to replace any lost or destroyed certificate of service, or like form, issued on release from extended active duty (EAD) in the Army.

(e) AF Form 682, Certificate in Lieu of Lost or Destroyed Certificate of Service (USAF), is used to replace any lost or destroyed certificate of service, or like form, issued on release from EAD in the Air Force.

### § 887.6 Who must sign CILs.

(a) DD Form 363AF must be signed by a general officer or colonel.

(b) All other CILs must be signed by a commissioned officer, NCO in grade of master sergeant or above, or a civilian in grade GS–7 or above.

### § 887.7 Persons separated under other than honorable conditions (undesirable or bad conduct) or dishonorable discharge.

Those persons whose character of service was under other than honorable conditions or dishonorable are not eligible for CILs. However, an official photocopy of the report of separation or certificate of discharge (DD Form 214, Certificate of Release or Discharge From Active Duty, or equivalent form), if available, may be sent on written request of the member.

(a) On the DD Forms 214 issued before October 1, 1979, the following items will be masked out before a photocopy is sent out:

(1) Specific authority for separation.

(2) Narrative reason for separation.

(3) Reenlistment eligibility code.

(4) SPD or separation designation number (SDN).

(b) For DD Forms 214 issued after October 1, 1979, send one copy with the Special Additional Information Section, and one copy without it.

(c) If a report of separation is not available, furnish a brief official statement of military service. Use the letterhead stationery of the issuing records custodian. File copy of the statement in the master personnel record (MPerR).

(d) If (obsolete form) DD Form 258AF, Undesirable Discharge Certificate, has been issued, it may be replaced with DD Form 794AF, Discharge Under Other Than Honorable Conditions.

(e) A $4.25 fee may be charged for issuing a document under this section, with the exception of paragraph (d) of this section.

### §887.8 Where to apply for certificates.

(a) For DD Form 363AF: Headquarters, Air Force Military Personnel Center, Officer Actions Branch (HQ AFMPC/DPMD00), Randolph AFB TX 78150–6001, for officers; and Headquarters, Air Force Military Personnel Center, Analysis and Certification Section (HQ AFMPC/DPMD0A2), Randolph AFB TX 78150–6001, for enlisted members. Applicants must attach a copy of the retirement order to SF 180 or letter.

(b) All other certificates:

(1) HQ AFMPC/DPMD00 for officers, and HQ AFMPC/DPMD0A2, for enlisted members, Randolph AFB TX 78150–6001 for:

(i) Members on EAD or on the temporary disability retired list (TDRL).

(ii) General officers in retired pay status.

(2) National Personnel Records Center, Military Personnel Records—Air Force (NPRC/MPR–AF), 9700 Page Boulevard, St. Louis MO 63132, for officers and enlisted members:

(i) Completely separated from the Air Force or Air National Guard.

(ii) In a retired pay status, except general officers.

(iii) In the retired Reserve who cannot become eligible for retired pay.

(3) Headquarters, Air Reserve Personnel Center, Reference Services Branch (HQ ARPC/DSMR), Denver CO 80280–5000, for Air National Guard and Air Force Reserve officers and enlisted members not on EAD, including retired Reserve who will be eligible for retired pay at age 60.

### §887.9 Furnishing photocopies of documents.

This part does not prohibit authorities (see §887.8) from supplying photocopies of certificates of service, reports of separation, or similar documents. Agencies that provide copies of DD Form 214 (or their equivalent) will conspicuously affix an ''official'' seal or stamp on them to indicate that these documents are copies made from official United States Air Force military personnel records.

## PARTS 888–888g [RESERVED]

# SUBCHAPTER J—CIVILIAN PERSONNEL [RESERVED]
# SUBCHAPTER K—MILITARY TRAINING AND SCHOOLS

## PART 901—APPOINTMENT TO THE UNITED STATES AIR FORCE ACADEMY


Sec.
901.0 Purpose.

### Subpart A—Appointment Policies and Requirements

901.1 General policy.
901.2 Appointments and nominations.
901.3 Categories of nominations for appointment.
901.4 Basic eligibility requirements.
901.5 Academic examination requirements.
901.6 Candidate fitness test requirement.

### Subpart B—Nomination Procedures and Requirements

901.7 Precandidate evaluation.
901.8 Congressional and U.S. Possessions categories.
901.9 Vice-Presidential category.
901.10 Presidential category.
901.11 Children of deceased or disabled veterans and children of military or civilian personnel in a missing status category.
901.12 Honor military and honor Naval schools—AFROTC and AFJROTC category.
901.13 Children of Medal of Honor recipients category.
901.14 Regular airmen category.
901.15 Reserve airmen category.
901.16 Superintendent category.
901.17 Foreign students category.
901.18 Appointment vacancy selection.
901.19 Qualified alternate selection.
901.20 Notice of nomination.
901.21 Notification of selection or nonselection.
901.22 Notification of change of address or station assignment.
901.23 Filling Presidential and airmen nominating categories.
901.24 Supply of forms.
901.25 Obligation of cadet appointment.
901.26 Cadet's oath of allegiance.
901.27 Charging of appointees.
901.28 OMB approval of information collection requirements.


AUTHORITY: 10 U.S.C., Chapter 903, and 10 U.S.C. 8012, except as otherwise noted.

SOURCE: 51 FR 23221, June 26, 1986, unless otherwise noted.

NOTE: This part is derived from Air Force Regulation 53–10, October 22, 1985.

Part 806 of this chapter states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the material referenced herein.

### §901.0 Purpose.

This part tells civilian and enlisted personnel (including Air Force Reserve and National Guard) the methods of applying and the requirements and procedures for appointing young men and women to the United States Air Force Academy.

NOTE: This part is affected by the Privacy Act of 1974. The systems of records prescribed in this part are authorized by 10 U.S.C., chapter 903; and 10 U.S.C. 8012. Each form that is subject to the provisions of part 806b.5 of this chapter, and is required by this part, contains a Privacy Act Statement either incorporated in the body of the document or in a separate statement accompanying each such document.

## Subpart A—Appointment Policies and Requirements

### §901.1 General policy.

Appointments as U.S. Air Force Academy cadets are offered to those candidates having the strongest potential to become successful career officers. Offers of appointment are made according to the law and guidance provided by HQ USAF to most effectively accomplish the Academy's mission. All candidates are appointed as cadets under the authority of the President; however, an appointment is conditional until the candidate is admitted.

### §901.2 Appointments and nominations.

Appointments and nominations are based on statutory authority contained in 10 U.S.C., chapter 903. Specific authorities may nominate eligible applicants for appointment vacancies at the Academy. Each applicant must obtain a nomination to receive an appointment. Applicants may apply for a nomination in each category in which they are eligible.

**§901.3 Categories of nominations for appointment.**

All appointees must have a nomination in at least one of the following categories:

(a) Congressional and U.S. Possessions categories include the following nominating authorities:

(1) U.S. Senators and Representatives.

(2) Delegates in Congress from the District of Columbia, Guam, Virgin Islands, and American Samoa.

(3) Resident Commissioner of Puerto Rico.

(4) Governor of Puerto Rico.

(5) Administrator of the Panama Canal Commission.

(b) Vice-Presidential category.

(c) Presidential competitive category.

(d) Children of deceased or disabled veterans and children of military or civilian personnel in missing status competitive category.

(e) Honor military and honor Naval schools, Air Force Reserve Officers' Training Corps (AFROTC), and Air Force Junior Reserve Officers' Training Corps (AFJROTC) competitive category.

(f) Children of Medal of Honor recipients category.

(g) Air Force enlisted regular competitive category.

(h) Air Force enlisted reserve competitive category.

(i) Superintendent competitive category.

(j) Foreign students competitive category (40 foreign persons designated to receive instruction under 10 U.S.C 9344).

**§901.4 Basic eligibility requirements.**

Each applicant must meet the following eligibility requirements:

(a) *Age.* Applicants must be at least 17, and not have passed their 22nd birthday on July 1 of the year of entry into the Academy.

(b) *Citizenship.* Except for students sponsored by foreign governments under 10 U.S.C. 9344, applicants must be citizens or nationals of the United States. All incoming cadets must verify citizenship status before admission:

(1) For American-born citizens, certified birth certificate presented to the Director of Admissions (USAFA/RRS), U.S. Air Force Academy, Colorado Springs CO 80840–5651 before administration of oath of appointment.

(2) Foreign cadets must present certified copies of certificates of arrival and nationalization or citizenship to USAFA/RRS before administration of oath of appointment.

NOTE: Facsimiles, copies, photographs or otherwise of birth certificate or certificate of citizenship will not be accepted unless properly certified by the raised seal of the issuing authority.

(c) *Domicile.* If nominated by an authority designated in the Congressional and U.S. Possessions categories, the applicant must be domiciled within the constituency of such authority.

(d) *Exemplary standards.* Applicants must be of highest moral character, personal conduct, and integrity. The Academy requires applicants to explain or clarify any of the circumstances below. For any military applicant or nominee whose official records indicate questionable background, commanders furnish the applicable information to USAFA/RRS.

(1) Applicant is or has been a conscientious objector. In this case, an affidavit is required stating that such beliefs and principles have been abandoned so far as they pertain to willingness to bear arms and give full and unqualified military service to the United States.

(2) Any facts that indicate the applicant's appointment may not be consistent with the interests of national security.

(3) Conviction by court-martial of other than a ''minor offense'' (MCM, 1984, part V, paragraph 1e, page V–1) or conviction of a felony in a civilian court.

(4) Elimination from any officer training program or any preparatory school of the Army, Navy, or Air Force Academies for military inaptitude, indifference, or undesirable traits of character. This includes any person who resigned in lieu of impending charges or who was eliminated by official action.

(5) Habitual alcohol misuse or drug abuse which exceeds the standards of AFR 30–2 is disqualifying.

(6) Any behavior, activity, or association showing the applicant's conduct is incompatible with exemplary standards of personal conduct, moral character, and integrity.

(e) *Marital status.* Applicant must be unmarried. (Any cadet who marries is disenrolled from the Academy.)

(f) *Dependents.* Applicant must not have a legal obligation to support a child, children, or any other person.

NOTE: For the purpose of this regulation, children are defined as the natural children of a parent and adopted children whose adoption proceedings were initiated before their 15th birthday.

(g) *Medical requirements for admission.* Before being admitted to the academy, candidates must take a medical examination and meet the medical standards outlined in AFRs 160–13 and 160–43. All candidates must meet the medical standards specified by the Secretary of the Air Force. Waivers may be granted by the Air Force Academy Command Surgeon. As specified by HQ USAF, most of the candidates admitted to the Academy must meet the eligibility standards for flying training.

### § 901.5 Academic examination requirements.

Before being offered an appointment, candidates must take either the College Board Admission Testing Program (ATP) or the American College Testing Program (ACT) test.

(a) *ATP.* A candidate who elects to use the ATP tests must take the Scholastic Aptitude Tests (SAT). The candidate is encouraged but not required to take achievement tests of English Composition and Level 1 (Standard) Mathematics or Level II (Intensive) Mathematics. (Level 1 recommended for candidates without advanced high school mathematics.)

(b) *ACT.* Candidates who elect to use the ACT tests must take the complete battery of tests: English, mathematics, social studies, and natural sciences.

### § 901.6 Candidate fitness test requirement.

Before being offered an appointment, candidates must take a Candidate Fitness Test (CFT) which consists of exercises designed to measure muscular strength, coordination, and aerobic power. Waivers to the CFT requirement may be granted by the Air Force Academy Director of Athletics if a candidate's participation in high school athletics conflicts with test administration dates and the candidate clearly demonstrates an acceptable level of physical fitness.

## Subpart B—Nomination Procedures and Requirements

### § 901.7 Precandidate evaluation.

The Air Force Academy conducts a precandidate evaluation program as an initial step in the admissions process and as an aid to Members of Congress in screening their applicants for nomination.

(a) Applicants normally are sent a precandidate packet, including USAFA Form 149, Precandidate Questionnaire, with a request for the applicant to provide academic, athletic, leadership, and medical information.

(b) The Academy evaluates the precandidate information and provides an analysis to appropriate congressional offices. Such information gives the nominating authorities an indication of the applicant's potential to qualify for admission and the applicant's self-reported medical status; it does not, however, reflect the applicant's final admission status. It is intended only to aid in selecting the best-qualified applicants for nomination.

(c) Applicants whose evaluation indicates they are fully qualified will be notified and advised to seek a nomination. Individuals whose evaluations reflect areas needing improvement are informed and encouraged to submit additional test scores or information in an effort to meet the qualifying levels.

### § 901.8 Congressional and U.S. Possessions categories.

Individuals who meet the basic eligibility requirements of § 901.4 may apply for a nomination according to their domicile (permanent legal residence).

(a) U.S. Senators, U.S. Representatives, the District of Columbia Delegate to the House of Representatives, and the Resident Commissioner of Puerto Rico are each authorized a quota of five cadets attending the Academy at any one time. If a vacancy

occurs in their quota, each may nominate ten candidates to fill each vacancy.

(b) Delegates in Congress from Guam and from the Virgin Islands are each authorized a quota of two cadets attending the Academy at any one time. If a vacancy occurs in their quota, each may make ten nominations. Eligible residents may apply for a nomination directly to their Delegate.

(c) The Governor of Puerto Rico, the Delegate from American Samoa, and the Panama Canal Commission Administrator may each have one cadet attending the Academy and each may nominate ten candidates to fill their vacancy.

(1) Applicants domiciled in and natives of Puerto Rico may apply to the Governor of Puero Rico in addition to the Resident Commissioner.

(2) Applicants domiciled in American Samoa may apply to their Delegate.

(3) Children of civilian personnel of the U.S. Government residing in the Republic of Panama who are citizens of the United States may apply to the Panama Canal Commission Administrator.

(d) Nominating authorities in these categories normally submit their nominations by January 31 for the class entering the following summer.

(1) These nominating authorities may nominate only if a vacancy occurs from their authorized quota of cadets attending the Academy. Vacancies normally occur from graduation or separation of cadets from the Academy. Failure of a member of a graduating class to complete the Academy program with his class does not delay the admission of his or her successor. HQ USAF/DPPA maintains the master records of cadets nominated and appointed, determines vacancies in each nominating authority's quota, and validates nominations submitted by each nominating authority.

(2) These nominating authorities forward their nominations on DD Form 1870, Nomination for Appointment to the U.S. Military Academy, Naval Academy, or Air Force Academy, for each Air Force Academy nominee through HQ USAF/DPPA, Washington, DC 20330–5060, to USAFA/RRS, USAF Academy, Colorado Springs, CO 80840–5651.

### §901.9 Vice-Presidential category.

The Vice President of the United States nominates from the United States at large, and is authorized a quota of five cadets attending the Academy at any one time. For each vacancy occurring in the quota, ten individuals may be nominated to fill the vacancy. Requests for a nomination are submitted directly to the Vice President no later than October 31. Any individual who meets the basic eligibility requirements of §901.4 may apply to the Vice President for a nomination. The Vice President forwards nominations on DD Form 1870 for each Air Force Academy nominee through HQ USAF/DPPA, Washington, DC 20330–5060, to USAFA/RRS, USAF Academy, Colorado Springs, CO 80840–5651.

### §901.10 Presidential category.

Appointments to fill vacancies from this category are made from candidates in order of merit. One hundred appointments are authorized each year.

(a) The child of a Regular or Reserve member of the Armed Forces of the United States is eligible for nomination if:

(1) The parent is on active duty and has completed 8 years of continuous active duty service (other than for training) by July 1 of the year that the candidate would enter the U.S. Air Force Academy; or

(2) The parent was retired with pay or was granted retired or retainer pay (children of reservists retired and receiving pay pursuant to 10 U.S.C., chapter 67, are ineligible); or

(3) The parent died after retiring with pay or died after being granted retired or retainer pay (children of such reservists who were retired and receiving pay pursuant to 10 U.S.C., chapter 67, are ineligible); and

(4) The applicant does not meet the eligibility requirements for the Children of Deceased or Disabled Veterans (CODDV) nomination category. (By law, a person eligible for appointment consideration under the DOCCV category is not a candidate in the Presidential category.)

(b) An eligible individual applies to USAFA/RRS, U.S. Air Force Academy, Colorado Springs, CO 80840–5651. A suggested letter format is included in the precandidate packet. The nominating period opens on May 1 and closes January 31. Applicants do not write directly to the President of the United States, since the applications are processed by the Air Force Academy.

NOTE: For the purpose of this category, children are defined as the natural children of a parent and adopted children whose adoption proceedings were initiated before their 15th birthday.

### § 901.11 Children of deceased or disabled veterans and children of military or civilian personnel in a missing status category.

Appointments to fill vacancies from this competitive category are made from candidates in order of merit. Appointments authorized in this category are limited to 65 cadets at the Academy at any one time.

(a) The child of a deceased or disabled member of the Armed Forces of the United States is eligible for nomination if:

(1) The parent was killed in action or died of wounds or injuries received or diseases contracted while in active service or of preexisting injury or disease aggravated by active service; or

(2) The parent has a permanent service-connected disability rated at not less than 100 percent resulting from wounds or injuries received or diseases contracted while in active service, or of preexisting injury or disease aggravated by active service.

(b) The child of a parent who is in ''missing status'' is eligible if the parent is a member of the Armed Services or a civilian employee in active government service who is officially carried or determined to be absent in a status of missing; missing in action; interned in a foreign country; captured, beleaguered, or beseiged by a hostile force; or detained in a foreign country against the person's will.

(c) To request a nomination in this category, an individual submits an application to USAFA/RRS between May 1 and January 31. A suggested letter format is included in the precandidate packet.

NOTE: For the purpose of this category, children are defined as the natural children of a parent and adopted children whose adoption proceedings were initiated before the 15th birthday.

### § 901.12 Honor military and honor Naval schools—AFROTC and AFJROTC category.

Appointments to fill vacancies from this competitive category are made from candidates in order of merit. Twenty appointments are authorized each year.

(a) Honor military and honor Naval schools:

(1) Five honor graduates, or prospective honor graduates, from each designated honor military and honor naval school may be nominated to fill the vacancies allocated to this category. School authorities must certify that each nominee is a prospective honor graduate or an honor graduate, and meets the basic eligibility requirements.

(2) School authorities submit nominees directly to the Academy (USAFA/RRS) using specific nomination forms. Such nominations are submitted no later than January 31 of the entry year. Nominations are not limited to honor graduates of the current year. An individual eligible for nomination in this category applies to the administrative authority of the school involved.

(b) AFROTC and AFJROTC:

(1) Five students from each college or university AFROTC detachment may be nominated to compete for the vacancies allocated in this category.

(i) Students must apply for nomination to the Professor of Aerospace Studies (PAS) who must certify that the applicants meet the basic eligibility requirements and have or will have satisfactorily completed at least 1 year of scholastic work at the time the class for which they are applying enters the Academy.

(ii) The PAS uses the forms provided by the Academy to recommend for nomination the five best-qualified applicants to the president of the educational institution in which the AFROTC detachment is established.

(iii) Nominations from the president of the institution are submitted directly to the Academy (USAFA/RRS) by January 31 of the entry year.

(2) Five students from each high school AFJROTC detachment may be nominated to compete for the vacancies allocated to this category.

(i) Students must apply for nomination to the Aerospace Science Instructor, who must certify that the applicants meet the basic eligibility requirements and have or will have successfully completed the prescribed AFJROTC program by the end of the school year.

(ii) The Aerospace Science Instructor uses the nomination forms provided by the Academy to recommend for nomination the five best-qualified applicants to the principal of the high school in which the AFJROTC detachment is established.

(iii) Nominations from the principal of the high school are submitted directly to the Academy by January 31 of the entry year.

### §901.13 Children of Medal of Honor recipients category.

(a) The child of any Medal of Honor recipient who served in any branch of the Armed Forces may apply for nomination. If applicants meet the eligibility criteria and qualify on the entrance examinations, they are admitted to the Academy. Appointments from this category are not limited.

(b) The applicant applies directly to the Academy requesting a nomination in this category. The nominating period opens on May 1 and closes January 31. A suggested letter format is included in the precandidate packet.

NOTE: For the purpose of this category, children are defined as the natural children of a parent and adopted children whose adoption proceedings were initiated before their 15th birthday.

### §901.14 Regular airmen category.

Appointments to fill vacancies from this competitive category are made from candidates in order of merit. A total of 85 appointments are authorized from this category each year. Applications must be submitted no later than January 31 of the entry year.

(a) Any enlisted member of the Regular component of the Air Force may apply for nomination. Selectees must be in active duty enlisted status when appointed as cadets.

(b) Regular category applicants must arrange to have their high school transcripts submitted to USAFA/RRS. They must also complete AF Form 1786, ''Application for Appointment to the United States Air Force Academy Under Quota Allotted to Enlisted Members of the Regular and Reserve Components of the Air Force,'' and submit it to their organization commander who:

(1) Determines if the applicant meets the basic eligibility requirements shown in §901.4 of this part. If disqualified, the application is returned and the applicant is informed of the reason.

(2) Advises the Consolidated Base Personnel Office (CBPO) to hold any reassignment action of the airman pending selection for an appointment. The CBPO places the airman in assignment availability code (AAC) 05 and coordinates on AF Form 1786. Applicants not selected are reassigned on Academy notification to the CBPO. Applicants to technical school follow-on training (if there is any) or PCS to their end assignment also are reassigned. The initial application package from the technical training center CBPO to USAFA/RRS includes the following information on all pipe-line students: name, SSN, AFSC, course graduation date, follow-on training, and end assignment.

(3) Completes an indorsement and forwards AF Form 1786 through the CBPO to USAFA/RRS, USAF Academy, Colorado Springs CO 80840–5651. The commander's indorsement must include a comprehensive statement of the applicant's character, ability, and motivation to become a career officer. Statements in the application regarding component, length of service, and date of birth must be verified from official records.

### §901.15 Reserve airmen category.

Appointments to fill vacancies from this competitive category are made from candidates in order of merit. A total of 85 appointments are authorized from this category each year. Applications must be submitted no later than January 31 of the entry year.

(a) Any enlisted member of the Air Force Reserve or the Air National Guard of the United States (ANGUS) may apply for nomination.

(b) A Reserve commissioned officer who satisfactorily completes 1 year of service in an active Reserve assignment by July 1 of the year in which admission is sought may apply for vacancies in this category. (Reserve commissioned officer on extended active duty (EAD) may apply for vacancies in the Regular competitive category.) If selected, such candidates must have commissioned officer status terminated and be in the enlisted Air Force Reserve before appointment as Air Force Academy cadets. Cadets in this category who are separated from the Air Force Academy without prejudice and under honorable conditions may apply for reappointment as Reserve commissioned officers.

(c) Reserve category applicants must arrange to have their high school transcripts submitted to USAFA/RRS, complete AF Form 1786, and submit it to their organization commander. The organization commander processes the application as outlined in § 901.14(b). A Reserve applicant is not placed on active duty to be processed for nomination or appointment to the Air Force Academy.

(d) Reserve airmen on EAD as a result of an honor suspension from the Air Force Academy Cadet Wing must reapply for admission under the procedures specified in § 901.14(b). Additionally, the AF Form 1786 which they submit must be endorsed by their wing commander, as well as their squadron commander, and must make specific recommendations about their potential to conform to Cadet Honor Code standards.

### § 901.16 Superintendent category.

Fifty eligible applicants who have not secured a nomination to the Academy from any other nominating authority may be nominated by the Superintendent. Highly qualified applicants are selected for nomination from the nationwide precandidate program by the Academy. Appointments from this category are made in order of merit from the nationwide pool of qualified alternates to fill the class.

### § 901.17 Foreign students category.

(a) The Academy is authorized to provide instruction to as many as 40 foreign persons at any one time. Foreign citizens must apply to the government of their own country. Coordination with the U.S. Embassy is necessary to ensure all admission and appointment requirements are met. HQ USAF/DPPA effects necessary consultation before nomination invitations are forwarded to each country.

(b) The application must contain complete particulars about the applicant's background and must be submitted as early as possible. Nominations from this category must be received by the Academy by December 31 before their desired summer admission. Applicants in these categories must meet the eligibility and admissions requirements established for all Academy candidates, except the requirement to be a U.S. citizen, and they must be able to read, write, and speak English proficiently.

### § 901.18 Appointment vacancy selection.

To fill a vacancy in the Vice-Presidential quota or in the quota of a nominating authority in the congressional and U.S. Possessions categories, selections for appointment offers are made according to the following nomination methods.

(a) *The principal numbered-alternate method.* The nominating authority indicates his or her personal preference by designating a principal nominee and listing nine numbered alternate nominees in order of preference, and the appointment is offered to the first fully qualified nominee.

(b) *The principal competitive-alternate method.* The nominating authority designates his or her principal nominee and names up to nine other nominees who are evaluated by the Academy and ranked behind the principal nominee in order of merit. If the principal nominee is fully qualified, that individual is offered the appointment; otherwise, the fully qualified nominee ranked the highest by the Academy is offered the appointment.

(c) *The competitive method.* At the request of the nominating authority, the Academy evaluates the records of all

the nominees and ranks them in order of merit. The fully qualified nominee ranked the highest by the Academy is offered the appointment.

**§901.19 Qualified alternate selection.**

Fully qualified candidates not offered appointments in their nominating category are placed in a nationwide pool of qualified alternates. To bring the Cadet Wing up to full strength, additional appointments are selected from this pool in order of merit. The first 150 additional appointments are of individuals having nominations from Members of Congress. Thereafter, three of every four additional appointments are of individuals having nominations from the Vice President, Members of Congress, Delegates to Congress (from the District of Columbia, Virgin Islands, and Guam), Governor of Puerto Rico, Resident Commissioner of Puerto Rico, or Administrator of Panama Canal Commission.

**§901.20 Notice of nomination.**

The Director of Admissions (USAFA/RRS) acknowledges receipt of all applicants' nominations. If not previously received, USAFA/RRS forwards a precandidate questionnaire for completion. If the precandidate questionnaire indicates the potential to qualify for admission to the Academy or the Preparatory School, USAFA/RRS sends the individual a candidate kit which includes: USAFA Form 146, AFA Candidate Personal Data Record; USAFA Form 147, AFA Candidate Activities Record; and USAFA Form 148, AFA Request for Secondary School Transcript; AF Form 2030, Drug Abuse Certificate; and complete processing instructions.

**§901.21 Notification of selection or nonselection.**

(a) Notification of candidates selected for appointment are furnished by USAFA/RRS to HQ USAF/DPPA. HQ USAF/DPPA notifies Members of Congress and the Vice President of offers of appointment. After HQ USAF/DPPA notifies the nominating sources and advises USAFA/RRS that notification has been completed, USAFA/RRS notifies each appointee (civilian, Regular or Reserve service member) by letter, enclosing an acceptance or declination statement form. On receipt of an acceptance statement for each unconditional offer of appointment, USAFA/RRS forwards the completed candidate file to Cadet Examinations and Records (USAFA/RR). Conditional offers of appointment that have been accepted are held by USAFA/RRS until the conditional factor is resolved—medical status cleared, satisfactory preparatory school or college transcript received, proof of citizenship provided, etc. HQ USAF/DPPA is notified of removal of conditional status from offer of appointment in order to notify nominating sources as stated above. USAFA/RR completes admissions inprocessing by:

(1) Forwarding an appointment kit which includes detailed reporting instructions to each appointee.

(2) Issuing invitation to travel orders.

(3) Notifying the Directorate of Cadet Personnel (USAFA/DPYC) of Regular airmen appointees. Regular airmen in technical school completes all phases of training, if time permits, before reporting to the Academy. On graduation, the airmen remain at the technical school in casual status (unless otherwise directed by HQ AFMPC/MPCRAC1) until earliest reporting date for the Academy.

(b) The Department of Defense Medical Examination Review Board (DODMERB) notifies applicants of their medical status. USAFA/RRS informs HQ USAF/DPPA of changes in medical status of candidates offered conditional appointments.

(c) USAFA/RRS notifies each unsuccessful candidate by May 1. For active duty Air Force personnel, the servicing CBPO also is notified and cancels the airman's Assignment Availability Code 05.

**§901.22 Notification of change of address or station assignment.**

The applicant or nominee is personally responsible for notifying USAFA/RRS, USAF Academy, Colorado Springs, CO 80840–5651, of every change of address or station assignment. Notifications from military personnel must include complete name, grade, SSN, and new organization or unit to which assigned.

**§ 901.23 Filling Presidential and airmen nominating categories.**

If any of the annual quotas of cadets authorized in the Regular airman, Reserve airman, or Presidential nomination categories are not filled, then candidates from the other two categories may fill the vacancies on a best-qualified basis.

**§ 901.24 Supply of forms.**

USAFA Forms 146, 147, 148 and 149 are stocked and issued by USAFA/RRS, USAF Academy, Colorado Springs, CO 80840–5651. DD Form 1870 is stocked and issued by the Air Force Academy Activities Group, HQ USAF/DPPA, Washington, DC 20330–5060.

**§ 901.25 Obligation of cadet appointment.**

(a) A cadet who enters the Air Force Academy directly from civilian status and takes an oath of allegiance as a cadet normally assumes a military service obligation of not less than 6 years nor more than 8 years under 10 U.S.C. 651.

(b) A cadet who enters the Air Force Academy from the Regular or Reserve component of the Air Force and fails to complete the Academy course of instruction reverts to enlisted status to complete any prior service obligation under 10 U.S.C. 516.

(c) If they are minors, cadets are required to sign an agreement with the parent's or guardian's consent that they will fulfill the following obligations:

(1) Complete the Academy course of instruction unless disenrolled from the Academy by competent authority.

(2) Accept an appointment and on graduation serve as a commissioned officer in a Regular component of one of the armed services for 5 years.

(3) Serve as a commissioned officer in the Reserve component until the 8th anniversary if authorized to resign from the Regular component before the 8th anniversary of their graduation.

(4) Be subject to the separation policies in AFR 53–3 and, perhaps, be required to serve on active duty in enlisted status if disenrolled from the Academy before graduation.

(5) Reimburse the U.S. Air Force under regulations prescribed by the Secretary of the Air Force for the costs of Academy education if the recipient, voluntarily or because of misconduct, fails to complete the period of active duty incurred.

**§ 901.26 Cadet's oath of allegiance.**

On admission, each appointee (except foreign cadets) will be required to take the following oath of allegiance:

> I (name), having been appointed an Air Force cadet in the United States Air Force, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office of which I am about to enter. So Help Me God.

If an appointee refuses to take and subscribe to the oath, the appointment is terminated.

**§ 901.27 Charging of appointees.**

Appointment of candidates is according to § 901.18. Selecting of the charged cadets from the nominees for each vacancy is accomplished as follows:

(a) *Principal nominee, numbered-alternate method.* Principal, if meeting the admission criteria, is appointed and charged. Otherwise the 1st alternate, if meeting the admission criteria, is appointed and charged or the next succeeding numbered alternate who meets the admission criteria is appointed and charged. In instances where a candidate received two principal nominations from two Congressional sources, the principal normally is charged to the Member of Congress submitting the principal nomination first.

(b) *Principal nominee, competitive-alternate method.* Principal, if meeting the admission criteria, is appointed and charged. All alternates are ranked according to merit. If the principal does not meet admission criteria, the highest ranking alternate is appointed and charged.

(c) *Competitive nominee method.* The group of competitive nominees are evaluated, ranked according to merit, and the highest-ranked nominee, if meeting the admission criteria, is appointed and charged.

(d) *Multiple Congressional nominations.* For candidates receiving numerous nominations, normally the candidate is charged to the congressional source. If the candidate is nominated by several congressional sources, the candidate normally is charged to the slate of the congressional member where the candidate ranks the highest, unless the candidate is the principal nominee or a numbered alternate.

(e) *Other sources of nomination.* All other candidates not nominated by congressional, Vice-Presidential, or U.S. Possessions who are appointed are charged to that nominating source (Presidential, AFJROTC, AFROTC, CODDV, Medal of Honor, etc.).

(f) *Qualified alternates.* To bring the Cadet Wing up to strength, the qualified alternate appointed according to §901.19 is charged to the Secretary of the Air Force as a qualified alternate. Those candidates having congressional, Vice-Presidential, or U.S. Possessions nominations appear as a qualified alternate for that nominating source.

(g) *Multiple congressional and other sources of nominations.* For appointees who have multiple nominations, USAFA/RRS determines the appointment category to which they are assigned. Normally a cadet with both congressional and non-congressional nominations is assigned to a congressional authority. Designation of ''charged'' cadets (those filling a Vice-Presidential, congressional, or U.S. Possessions quota) also is accomplished by USAFA/RRS according to §901.18. USAFA/RRS notifies HQ USAF/DPPA of these assignments which are audited and verified by HQ USAF/DPPA. The Vice Presidential and nominating authorities in Congress and U.S. Possessions are notified of their charged appointees and other nominees who win appointments by HQ USAF/DPPA.

### §901.28 OMB approval of information collection requirements.

The information collection requirements in this part 901 have been approved by the Office of Management and Budget under control numbers 0701–0026, 0701–0063, 0701–0064, 0701–0066 and 0701–0087.

## PART 903—AIR FORCE ACADEMY PREPARATORY SCHOOL

Sec.
903.1 Purpose.
903.2 Preparatory school.
903.3 Yearly schedule.
903.4 School location.
903.5 Who is eligible.
903.6 When to apply.
903.7 Application procedures.
903.8 Selection procedures.
903.9 Notification of selection or nonselection.
903.10 Disenrollment.
903.11 Reassignment of students who are disenrolled or not offered an appointment to a service academy.
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.
903.13 Reserve enlistment procedures.
903.14 Sample letter.
903.15 Statement.

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

### Subpart A—General


Sec.
935.1 Applicability.
935.3 Purpose.
935.5 Definitions.
935.7 Effective date.


### Subpart B—Executive Authority


935.11 Designation and delegation of authority.
935.13 Permits.
935.15 Functions, powers, and duties.
935.16 Revocation or suspension of permits and registrations.
935.17 Autopsies.
935.18 Notaries public.
935.19 Emergency authority.


### Subpart C—Civil Law


935.21 Applicable law.
935.23 Civil rights, powers, and duties.


### Subpart D—Criminal Law


935.31 General.


### Subpart E—Petty Offenses


935.41 Criminal offenses.


### Subpart F—Penalties


935.51 Petty offenses.
935.53 Motor vehicle violations.
935.55 Violations of Subpart O or P of this part.
935.57 Contempt.


### Subpart G—Judiciary


935.60 Wake Island Court.
935.61 Island Attorney.
935.62 Public Defender.
935.63 Clerk of the Court.
935.64 Jurisdiction.
935.65 Court of Appeals.
935.66 Clerk of the Court of Appeals.
935.67 Jurisdiction of the Court of Appeals.
935.68 Qualifications.


### Subpart H—Statute of Limitations


935.70 Limitation of actions.


### Subpart I—Subpoenas, Wake Island Court


935.80 Subpoenas.


### Subpart J—Rules of Civil Procedure


935.90 General.
935.91 Summons.
935.92 Service of complaint.
935.93 Delivery of summons to plaintiff.
935.94 Answer.
935.95 Proceedings; record; judgment.
935.96 Execution of judgment.
935.97 Garnishment.


### Subpart K—Rules of Criminal Procedure


935.100 Bail.
935.101 Seizure of property.
935.102 Information.
935.103 Motions and pleas.
935.104 Sentence after a plea of guilty.
935.105 Trial.


### Subpart L—Appeals and New Trials


935.110 Appeals.
935.111 New trial.


### Subpart M—Peace Officers


935.120 Authority.
935.122 Arrests.
935.124 Warrants.
935.126 Release from custody.
935.128 Citation in place of arrest.


### Subpart N—Motor Vehicle Code


935.130 Applicability.
935.131 Right-hand side of the road.
935.132 Speed limits.
935.133 Right-of-way.
935.134 Arm signals.
935.135 Turns.
935.136 General operating rules.
935.137 Operating requirements.
935.138 Motor bus operation.
935.139 Motor vehicle operator qualifications.
935.139a Motor vehicle maintenance and equipment.


### Subpart O—Registration and Island Permits


935.140 Registration.
935.141 Island permit for boat, vehicle, or firearm.
935.142 Activities for which permit is required.


### Subpart P—Public Safety


935.150 Emergency requirements and restrictions.
935.151 Fire hazards.
935.152 Use of special areas.

935.153 Unexploded ordnance material.
935.154 Boat operations.
935.155 Floating objects.

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)

Sec.

989.1 Purpose.
989.2 Concept.
989.3 Responsibilities.
989.4 Initial considerations.
989.5 Organizational relationships.
989.6 Budgeting and funding.
989.7 Requests from non-Air Force agencies or entities.
989.8 Analysis of alternatives.
989.9 Cooperation and adoption.
989.10 Tiering.
989.11 Combining EIAP with other documentation.
989.12 Air Force Form 813, Request for environmental impact analysis.
989.13 Categorical exclusion.
989.14 Environmental assessment.
989.15 Finding of no significant impact.
989.16 Environmental impact statement.
989.17 Notice of intent.
989.18 Scoping.
989.19 Draft EIS.
989.20 Final EIS.
989.21 Record of decision.
989.22 Mitigation.
989.23 Public notification.
989.24 Base closure and realignment.
989.25 Classified actions (40 CFR 1507.3(e)).
989.26 Occupational safety and health.
989.27 Airspace proposals.
989.28 Air quality.
989.29 Pollution prevention.
989.30 Special and emergency procedures.
989.31 Reporting requirements.
989.32 Procedures for analysis abroad.
989.33 Requirements for analysis abroad.
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.