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AUTHORITY: 5 U.S.C. 552.

SOURCE: 64 FR 72908, Dec. 28, 1999, unless otherwise noted.

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

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

§ 806.3 Public information.
(a) Functional requests. Air Force elements may receive requests for government information or records from the public that do not refer to the FOIA. Often these requests are sent to a public affairs office (PAO) or a specific unit. All releases of information from Air Force records, whether the requester cites the FOIA or not, must comply with the principles of the FOIA and this part. If the requested material contains personal privacy information that the Air Force must withhold, it is particularly important to handle that functional request as a request under the FOIA and coordinate it with the appropriate FOIA office and an Air Force attorney. Regardless of the nature of the functional request, if the responding element denies the release of information from Air Force records, then control the request as a FOIA and follow FOIA denial procedures for records withheld (cite the pertinent FOIA exemption and give the requester FOIA appeal rights).
(b) HQ AFCIC/ITC will make the Air Force handbook and guide for requesting records available on the World Wide Web (WWW) from Air ForceLINK,
§ 806.4 Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) OPRs:

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

(2) Provide requested records. Indicate withheld parts of records annotated with FOIA exemption. Ensure requesters can see the placement and general length of redactions. This procedure applies to all media, including
电子记录。提供位置和一般长度的被删信息不是必填的，如果这样做会伤害一个被FOIA保护的例外。

（3）提供书面建议给披露者来决定是否发布记录，并在适当的时候作为去密者。


（1）确保所有FOIA行动的行政准确性。

（2）控制并处理FOIA请求。

（3）获得OPR对记录的建议。

（4）准备或协调所有提出的回复给请求者。FOIA管理者可能签署回复给请求者，当披露者批准记录的全部发布时。如果MAJCOM指示OPR回复，OPR将协调他们的回复与FOIA办公室。

（5）确定记录的性质是简单或复杂，如果有多线程的FOIA请求处理队列。

（6）批准或否决任何要求的快速处理。

（7）提供临时回复给请求者，如要求。

（8）提供阅读室来检查和复制记录。

（9）提供培训。

（10）审查那些FOIA的出版物是否与这一部分一致。

（11）进行周期性的程序审查。

（12）批准或否决初始费用的减免。

（13）做决定，当拒绝请求时。

（14）收集费用。

（15）发送延迟的通知。

（16）提交报告。

（17）签署“无记录”回复。

（18）提供要求的基础做出决定（例如，无记录，费拒绝，费用决定等）在足够细节，以便请求者可以决定是否上诉。

（1）在上诉中，FOIA管理者：

（1）重新评估一个费用类的索赔由请求者，推翻或确认最初的决定。

（2）重新评估对快速处理的请求由于证明的紧迫需要，推翻或确认最初的决定。

（3）重新评估对减免或费用的拒绝，推翻或确认最初的决定。

（4）审查费用的估计，推翻或确认最初的决定。

（5）确认没有记录位于对请求的回复。

（6）MAJCOM FOIA办公室是FOIA的焦点在安装的网页。

（7）当任何上诉寻求由一个FOIA请求者是被一个IDA或FOIA管理者为授权的行动，IDA或FOIA管理者将会以书面形式，被拒绝（全部或部分）。发送你送的文件给秘书处的Air Force in the course of a FOIA appeal action。通过MAJCOM FOIA办公室。

§ 806.6 Prompt action on requests.

（a）例子的信函给FOIA请求者（例如，回复决定和临时回复）被包括在§ 806.27。

（b）多线程处理。例子的信函给FOIA请求者（例如，
letters to individuals who have had their FOIA request placed in the complex track) are included in §806.27.

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

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

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

§ 806.7 Use of exemptions.

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

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

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

§ 806.8 Description of requested record.

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

§ 806.9 Referrals.

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

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

Keep records that were fully released for 2 years and denied records for 6 years. Include in the 6-year record file copies of records or parts of records that were released in response to the same request. Refer to Air Force Manual (AFMAN) 37–139, Records Disposition Schedule (converting to AFMAN 33–339, see §806.9(b)). The functional OPR or FOIA office may keep the records released or denied. The FOIA office keeps the FOIA case file for each request. The FOIA case file consists of: the initial request; tasking to OPRs; OPR's reply; memoranda for record (MFR) of phone calls or other actions related to the FOIA request; DD Forms 2086, Record of Freedom of Information (FOI) Processing Cost, or 2086–1, Record of Freedom of Information (FOI) Processing Cost for Technical Data; final response; and any of the following, if applicable: extension letter; legal opinions; submitter notification letters and replies; the appeal and required attachments (except for the released or denied records if maintained by the OPR); and all other correspondence to and from the requester.

§ 806.11 FOIA reading rooms.

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

§ 806.12 Record availability.

(a) HQ AFCIC/ITC will make the traditional FOIA-processed (a)(2) material (5 U.S.C. 552(a)(2)(A), (B), and (C)) available to the public. Each Air Force activity must make 5 U.S.C. 552(a)(2)(D) records (“FOIA-processed (a)(2)(D) records”)—records which they determine will, or have become, the subject of frequent or subsequent requests ("flurry" of FOIA requests for contract records immediately after a contract is awarded, but do not receive any subsequent requests for such bulky records after that point. In some cases, activities may decide that placing records in the ERR would not serve the statutory purpose of "diverting some potential FOIA requests for previously released records.") The following types of records should be considered for inclusion in the ERR (excluding individuals assigned to overseas, sensitive, and routinely deployable units): organizational charts and limited staff directories; lists of personnel reassigned with gaining base; MAJCOM FOIA supplements; lists of International Merchant Purchase Authority Card (IMPAC) card holders. Do not post lists of e-mail addresses.
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(c) GILS. Each activity that posts FOIA-processed (a)(2)(D) records (records which they determine will, or have become, the subject of frequent or subsequent requests) must create a GILS record for each FOIA-processed (a)(2)(D) record and post it to DefenseLINK. The OPR prepares the GILS record. You can complete and submit a GILS record on-line using a web browser. Instructions for completing the GILS record, and an on-line form are at http://www.defenselink.mil/locator/index.html. Follow the steps listed on the web page. The GILS site on DefenseLINK will serve as the central index of Air Force FOIA-processed (a)(2)(D) records.

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

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


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

§ 806.14 Other materials.

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

§ 806.15 FOIA exemptions.

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

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

(c) Exemption number 4. The Air Force, in compliance with Executive Order 12600, will advise submitters of
§ 806.15 contractor-submitted records when a FOIA requester seeks the release of such records, regardless of any initial determination of whether FOIA exemption (b)(4) applies. (See § 806.20(a) and § 806.31). Due to a change to Title 48 CFR, Federal Acquisition Regulations System, submitter notification is not required prior to release of unit prices contained in contracts awarded based upon solicitations issued after January 1, 1998. For solicitations issued before January 1, 1998, conduct a normal submitter notice. Unit prices contained in proposals provided prior to contract award are protected from release, as are all portions of unsuccessful proposals (before and after contract award) (10 U.S.C. 2305(g), Prohibition on Release of Contractor Proposals).

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

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

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

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

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

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

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

§806.16 For official use only.

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

(b) Dissemination and transmission.

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

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

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

§806.17 Release and processing procedures.

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

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

(2) Air Force host tenant relationships. The Air Force host base FOIA manager may log, process, and report FOIA requests for Air Force tenant units. In such cases, the host base FOIA office refers all recommended denials and “no records” appeals to the Air Force tenant MAJCOM FOIA manager. This does not apply to the Air
§ 806.18 Initial determinations.

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

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

§ 806.19 Reasonably segregable portions.

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

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

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

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

§ 806.21 Appeals.

(a) FOIA requesters seeking Air Force records must address appeals to the Office of the Secretary of the Air Force, through the FOIA office of the IDA that denied the request. Requesters should attach a copy of the denial letter to their appeal and give reasons for appealing. Air Force IDAs may reconsider any prior denials and may grant all or part of a requester’s appeal. When any appellate action sought by a FOIA requester is denied by an IDA, the IDA will include a statement that the issues raised in the appeal were considered and rejected (in full or in part) in any file sent to the Secretary of the Air Force in the course of a FOIA appeal action. Send all appeals to IDA decisions at the wing level.
through the MAJCOM FOIA office for sending to the Secretary of the Air Force’s designated appellate authority, SAF/GCA (and Air Force Legal Services Agency (AFLSA/JACL)). (See §§806.4(g), 806.5(b), and §806.5(k).) Additional steps are required prior to sending an appeal file.

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

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

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

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

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

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

§ 806.22 Time limits.

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

§ 806.23 Delay in responding to an appeal.

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

§ 806.24 Fee restrictions.

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

§ 806.25 Annual report.

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

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

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

(d) Other reasons.

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

(2) Not an agency record. The “not an agency record” other reason category only applies to requests for: objects or
§ 806.26 Addressing FOIA requests.

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

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

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

(d) MAJCOMs:


(2) Air Education and Training Command (AETC): HQ AETC/SCTS, 61

articles such as structures, furniture, vehicles and equipment, whatever their historical value, or value as evidence; anything that is not a tangible or documentary record such as an individual’s memory or oral communication; and personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee and not distributed to other agency employees for their official use. This category does not include “no record” responses.

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

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

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

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

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

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

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

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

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

(m) Authentication. MAJCOM SCs will sign as approving official (or two-letter functional equivalent for FOIA offices in other functional areas).
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Main Circle Suite 2, Randolph AFB TX 78150-4545.

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

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


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


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

(f) FOAs:


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


(g) Selected subordinate units: Air Force Communications Agency

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


(21) Air Force Center for Quality and Innovation (AFCQMI): AFCQMI/CSP, 550 C Street East, Randolph AFB, TX 78150-4451.


(23) Air Force Security Forces Center (AFSFC): AFSCF/CMCQ, 2920 Patrick Street, Lackland AFB, TX 78236-5226.


(26) Air Force Communications Agency

(AFCA): HQ AFCA/CCQI, 203 West Losey Street, Room 1022, Scott AFB, IL 62225–5203.

(h) Organizations which include air force elements:

(1) Army and Air Force Exchange Service (AAFES): HQ AAFES/GC-E, P.O. Box 66022, Dallas, TX 75266–0202.

(2) National Guard Bureau (NGB)/Air National Guard: NGB–AD, 2500 Army Pentagon, Washington, DC 20310–2500.

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

§ 806.27 Samples of Air Force FOIA processing documents.

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

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

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

(c) Interim response:

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

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

(d) Request for a more specific description:

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

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

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

(f) Collection of fees:

The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. We have placed you in the (enter the fee category) fee category. In your case, we have assessed a charge of $____ for processing your request. The fee was calculated in the following manner: (Give a detailed cost breakdown: for example, 15 pages of reproduction at $0.15 per page; 5 minutes of computer search time at $45.50 per minute, 2 hours of professional level search at $2 per hour.) Please make your check payable to (appropriate payee) and send it to (give your complete mailing address) by (date 30 days after the letter is signed). (or) The FOIA provides for the collection of fees based on the costs of processing a FOIA request and your fee category. We have placed you in the (enter the fee category); however, in this case, we have waived collecting fees.

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

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

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

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

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

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

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

In the second category, “urgently needed” means the information itself has a particular value that it will lose if it is not disseminated quickly. Ordinarily this means the information concerns a breaking news story of
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general public interest. Historic information, or information sought for litigation or commercial activities usually would not qualify for expedited processing in the second category. Also, the fact that a news organization has an internal broadcast or publication deadline, so long as the deadline was unrelated to the nature of the information itself (for example, the information was not a breaking news story of general public interest) would not make the information “urgently needed.”

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

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

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

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

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

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

Signature
(Date Signed) (Signature Block)

(NOTE: Some electronic data requests may include a request for software. You may have to release government-developed software that is not otherwise exempt, if requested under the FOIA. Exemptions 1—classified software, 2—testing, evaluation, or similar software, 3—exempt by statute, 5—deliberative process/privileged software, and 7—law enforcement operations software may apply, based on the nature of the requested software. If the software is commercial off-the-
shelf software, as opposed to software developed by the government, the software may qualify to be withheld from release under FOIA exemption 4.

(1) ‘No (paper or electronic) records’ or ‘requested format not available’ letters.

This is in response to your Freedom of Information Act (FOIA) request dated ## Month year, for (summarize the request) on ## Month year (date received), our number ####, was referred (or) must be coordinated with (give mailing address of the FOIA office to which you are referring all or part of the request). That organization has a significant interest in the records (or) created the records that may answer to your request. Before notifying a requester of a referral to another DoD component or federal agency, consult with them to determine if their association with the material is exempt. If so, protect the association and any exempt information without revealing the identity of the protected activity. (When a nongovernment submitter of information that may answer to your request needs time to respond to your request outside our organization, your request will be delayed. We will determine whether any records are available; as soon as is practicable, a decision will be made whether to release or to withhold from disclosure any responsive records under the FOIA, 5 U.S.C. 552. Your request will be processed as expeditiously as circumstances permit.

(2) Letter to another government agency.

(If all or part of a request was referred or requires coordination, write to the government entity): On ## Month year (date received), our organization received a Freedom of Information Act (FOIA) request from (identity of requester), Attachment 1, dated ## Month year, for (summarize the request). Based on our assessment of that request, our number ####, we need to (refer/coordinate) (all/part) of that request to you (describe which part is being referred or coordinated, if it was not the entire request). (Name and phone number of person who agreed to the
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referral or coordination) accepted this referral (or coordination) action was on (date). We notified the requester of this action (see § 806.31).

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

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

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

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

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

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

On ## Month year (date received), our organization received a Freedom of Information Act (FOIA) request from (identity of requester), our number #####, dated ## Month year, for (summarize the request). Because of the nature of this request, we need to coordinate this request with the Department of State. In accordance with DoD 5400.7-R, Air Force Supplement, we are informing you of their involvement in this FOIA request.

(Provide any specifics available.) Air Force records are involved in this action. If you need to contact us, our phone number is (give commercial and DSN numbers), our address is (give complete mailing address), our fax number is (give fax number), our e-mail address is (give complete e-mail address).

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

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

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

Signature
(Date Signed)  (Signature Block)

(2) Sample certification format—portions remain classified.

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

Signature
(Date Signed)  (Signature Block)

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

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

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

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

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

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

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

§ 806.28 Records with special disclosure procedures.

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

(a) AFI 16–701, Special Access Programs.
(b) AFI 31–206, Security Police Investigations.
(c) AFI 31–501, Personnel Security Program Management.
(d) AFI 31–601, Industrial Security Program Management.
§ 806.29 Administrative processing of Air Force FOIA requests.

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

(b) Procedures: FOIA requests.

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

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

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

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

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

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

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

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

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

(iii) An expedited request is when a requester asks for expedited processing and explains the compelling need (imminent threat to life or physical safety; urgently needed by a person primarily engaged in disseminating information to inform the public (primarily news media requesters); and would require extensive reprogramming or cause significant interference with operation of the automated information systems. (Advise requester, in writing, of right to limit the scope of their request in order to qualify for simple track.)

(C) Failure to obtain records quickly could cause imminent loss of substantial due process rights or providing the information quickly would serve a “humanitarian need” (i.e., disclosing the information will promote the welfare and interests of mankind). Information of historical interest only, or sought for litigation or commercial activities would not qualify, nor would the fact the requester has an internal broadcast deadline of its own, which was unrelated to the “news breaking nature” of the information itself, cause the requested information to qualify as “urgently needed.”

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

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

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

(2) Find the responsive Air Force records (if any).
(i) Send the request to the appropriate OPRs to search for responsive records and to decide whether to recommend release of any responsive records. Include a DD Form 2086, Record of Freedom of Information (FOI), or a DD Form 2086–1, Record of Freedom of Information (FOI) Processing Cost for Technical Data, in each request. The OPR must complete and return the appropriate forms and statements to the FOIA office.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Contacts with non-Air Force submitters of data. Before releasing data (information or records) submitted from outside the Air Force, determine whether you need to write to the submitter of the data for their views on releasability of their data. In many cases, this non-Air Force data may fall under FOIA Exemption 4. If it appears you must contact the submitter of the data, advise the requester in writing that you must give the submitter of the data the opportunity to comment before the Air Force decides whether to release the information. Give the submitter a reasonable period of time (30
§ 806.29  calendar days) to object to release and provide justification for withholding the documents. If the submitter does not respond, advise the submitter in writing that you have not received a reply and plan to release the records. Provide the submitter with the reasons the Air Force will release the records, and give the submitter your expected release date (at least 2 weeks from the date of your letter). This permits the submitter time to seek a temporary restraining order (TRO) in federal court, if they can convince the judge to issue such an order. See § 806.27 for samples of language to use in Air Force letters to both the FOIA requester and nongovernment submitters. Remember to include a copy of § 806.31 as an attachment to the letter sent to the nongovernment submitter.

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

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

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

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

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

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

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

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

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

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

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

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

(e) FOIA appeal actions.

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

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

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

(4) General administrative matters. FOIA requesters may ultimately sue the Air Force in federal court if they are dissatisfied with adverse determinations. In these suits, the contents of the administrative appeal file are evaluated to determine whether the Air Force complied with the FOIA and its own guidance. Improper or inadequate appeal files make defending these cases problematic. Include all the documents related to the requester’s FOIA action in the appeal file. If appeal file documents are sensitive, or are classified up to the SECRET level, send them separately to AFLSA/JACL, 1501 Wilson Boulevard, 7th Floor, Arlington, VA 22209-2403. Make separate arrangements with AFLSA/JACL for processing classified appeal file documents TOP SECRET or higher. Cover letters on appeal packages need to list all attachments. If a FOIA action is complicated, a chronology of events helps reviewers understand what happened in the course of the request and appeal. If an appeal file does not include documentation described below, include a blank sheet in proper place and mark as “not applicable,” “NA,” or “not used.” Do not renumber and
move the other items up. If any part of
the requester’s appeal is denied, the ap-
peal package must include a signed
statement by the IDA, demonstrating
the IDA considered and rejected the re-
quester’s arguments, and the basis for
that decision. This may be a separate
memorandum, an endorsement on a
legal opinion or OPR opinion, or the
cover letter which forwards the appeal
for final determination. Include in the
cover letter forwarding the appeal to
the Secretary of the Air Force the
name, phone number and e-mail ad-
dress (if any) of the person to contact
about the appeal. The order and con-
tents of appeal file attachments follow.

(i) The original appeal letter and en-
velope.

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

(iii) The denial letter.

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

(v) All legal opinions in chrono-
logical order. Include a point-by-point
discussion of factual and legal argu-
ments in the requester’s appeal (pre-
pared by an Air Force attorney and/or
the OPR). If the IDA does not state in
the cover letter he/she signed, that he/
she considered and rejected the re-
quester’s arguments, asserting the
basis for that decision (e.g., the IDA
concurs in the legal and/or OPR assess-
ments of the requester’s arguments) in-
clude a signed, written statement con-
taining the same information from the
IDA, either as a separate document or
an endorsement to a legal or OPR as-
sessment. Include any explanation of
the decision-making process for intra-
gency documents denied under the de-
liberative process privilege and how
the denied material fits into that proc-
ess (if applicable).

§ 806.30 FOIA exempt information ex-
amples.

(a) Certain responsive records may
contain parts that are releasable, along
with other parts that the Air Force
must withhold from release. Carefully
delete information exempt from release
under the FOIA from copies of other-
wise releasable records. Do not release
copies that would permit the requester
to “read through the marking.” In
order to assist FOIA managers in re-
dacting records, selected items appro-
priate to withhold in commonly re-
quested Air Force records are illus-
trated below. When providing releas-
able portions from classified para-
graphs, line through and do not delete,
the classification marking preceding the
paragraph.

(b) Exemption 1. Example used is an
extract from a “simulated” contin-
gency plan (all information below is
(U) Air Force members will safeguard all FELLOW YELLOW data (NOTE: FELLOW YELLOW simulates an UNCLASSIFIED code name).

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

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

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

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

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

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

SSgt Doe, Kerry E. SSN: 111-11-1112 Date of Birth: 22 Jun 71
§ 806.31 Requirements of 5 U.S.C. 552(b)(4) to submitters of non-government contract-related information.

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

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

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

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

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

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

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

NOTE: Certain proprietary and source selection information may also fall under exemption (b)(3), under the provisions of 10 U.S.C. 2306(g) or 41 U.S.C. 423, if statutory requirements are met.

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

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

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

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

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

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

(e) Submitter’s Written Response. If release of the requested material would prejudice your commercial interests, give detailed written reasons that identify the specific information and the competitive harm public release will cause to you, your organization, or your business. The act requires the Air Force to provide any reasonably segregable part of a record after deleting exempt portions. If deleting key words or phrases would adequately protect your interests, advise us in writing which portions you believe we can safely release, and which portions you believe we need to withhold from release. If you do not provide details on the probability of substantial harm to your competitive position or other commercial interests, which would be caused by releasing your material to the requester, we may be required to release the information. Records qualify for protection on a case by case basis.
APPENDIX A TO PART 806—REFERENCES

Title 5, United States Code, Section 552, The Freedom of Information Act, as amended
Title 5, United States Code, Section 552a, The Privacy Act (as amended)
Title 10, United States Code, Section 2305(g), Prohibition on Release of Contractor Proposals
Title 48, Code of Federal Regulations (CFR), Federal Acquisition Regulations (FAR) System
OMB Bulletin 95-01, 7 December 1994
OMB Memorandum, 6 February 1998
AFI 16-701, Special Access Programs
AFI 31-206, Security Police Investigations
AFI 31-401, Information Security Program Management
AFI 31-501, Personnel Security Program Management
AFI 31-601, Industrial Security Program Management
AFI 33-129, Transmission of Information Via the Internet
AFI 36-2603, Air Force Board for Correction of Military Records
AFI 36-2706, Military Equal Opportunity and Treatment Program
AFI 36-2906, Personal Financial Responsibility
AFI 36-2907, Unfavorable Information File (UIF) Program
AFPD 37-1, Air Force Information Management (will convert to AFDP 33-5)
AFPD 37-124, The Information Collections and Reports Management Program; Controlling Internal, Public, and Interagency Air Force Information Collections (will convert to AFI 33-324)
AFI 37-132, Air Force Privacy Act Program (will convert to AFI 33-332)
AFMAN 37-139, Records Disposition Schedule (will convert to AFMAN 33-339)

APPENDIX B TO PART 806—ABBREVIATIONS AND ACRONYMS

AFCA—Air Force Communications Agency
AFCIC—Air Force Communications and Information Center
AFRC—Air Force Reserve Command
AFI—Air Force Instruction
AFLSA/JACL—Air Force Legal Services Agency, General Litigation Division
AFMAN—Air Force Manual
AFPCM/SIMD—Air Force Personnel Center/Records Management, FOIA, and Privacy Act Office
AFPD—Air Force Policy Directive
ANG—Air National Guard
ASCII—American Standard Code for Information Interchange
CPR—Code of Federal Regulations
DFAS—Defense Finance and Accounting Service
DFOISR—Director, Freedom of Information and Security Review
DoD—Department of Defense
DRU—Direct Reporting Unit
EFOIA—Electronic Freedom of Information Act
ERR—Electronic Reading Room
FOA—Field Operating Agency
FOIA—Freedom of Information Act
FOUO—For Official Use Only
GAO—General Accounting Office
GILS—Government Information Locator Service
GPO—Government Printing Office
IDA—Initial Denial Authority
IG—Inspector General
IMPAC—International Merchant Purchase Authority Card
LOA—Letters of Offer and Acceptance
MAJCOM—Major Command
MFR—Memorandum for Record
NATO—North Atlantic Treaty Organization
NTIS—National Technical Information Service
OCR—Office of Corollary Responsibility
OMB—Office of Management and Budget
OPR—Office of Primary Responsibility
PA—Privacy Act
PAO—Public Affairs Office
PAS—Personnel Accounting Symbol
RCS—Reports Control Symbol
SAF—Secretary of the Air Force
SSN—Social Security Number
USAF—United States Air Force
WWW—World Wide Web

APPENDIX C TO PART 806—TERMS

Appellate Authority—The Office of the General Counsel to the Secretary of the Air Force (SAF/GCA).

Denial—An adverse determination on no records, fees, expedited access, or not disclosing records.

Determination—The written decision to release or deny records or information that is responsive to a request.

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

Disclosure Authority—Official authorized to release records, normally division chiefs or higher.

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

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

Functional Request—Any request for records from the public that does not cite the FOIA.

Government Information Locator Service (GILS)—An automated on-line card catalog of publicly accessible information.

Glomar Response—A reply that neither confirms nor denies the existence or nonexistence of the requested record.

Initial Denial Authority (IDA)—Persons in authorized positions that may withhold records.

Partial Denial—A decision to withhold part of a requested record.

Public Interest—The interest in obtaining official information that sheds light on how an agency performs its statutory duties and informs citizens about what their government is doing.

Reading Room—A place where the public may inspect and copy, or have copied, releasable records.

Records—The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials inclusive of those in electronic form or format, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the U.S. Government under Federal Law in connection with the transaction of public business and in the agency’s possession and control at the time the FOIA request is made. Records include notes, working papers, and drafts.

Redact—To remove nonreleasable material.

PART 806b—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.
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Subpart C—Collecting Personal Information

806b.7 How to collect personal information.
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806b.9 Requesting the social security number (SSN).

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806b.10 Making a request for access.
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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.
§ 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:
§ 806b.3

(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.
(h) MAJCOM and FOA Information Managers:
(1) Send a list of all systems of records and system managers in their area.
(2) Act as liaison with the Privacy Act Officer.
(3) 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.
§ 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 non-threatening 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 37–1411, ‘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 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:
§ 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 37–1312, ‘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 API 33–2023, ‘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:

(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 37–1294, ‘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.

4 See footnote 1 to section 806b.11, of this part.
(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 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 the 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.
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, ‘Privacy Act Training’, a self-paced course.
(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.

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

Section A–References

b. 10 U.S.C 8013, ‘Secretary of the Air Force: Powers and Duties.’
d. 32 CFR part 806b, ‘Air Force Privacy Act Program.’
e. DoD Directive 5400.11, ‘Department of Defense Privacy Program.’
f. DoD 5400.11–R 3, ‘Department of Defense Privacy Program.’
h. AFFD 37–1, ‘Air Force Information Management.’
k. AFMR 37–139, ‘Disposition of Records’ (formerly AFR 4–20, volume 2).
m. AFH 37–146, ‘Privacy Act Training.’

Section B–Definitions Abbreviations and Acronyms

a. AETC – Air Education and Training Command
b. APA – Air Force Academy
c. APBCMR – Air Force Board for Correction of Military Records
d. APISA – 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

1Copies may be obtained at cost from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.
h. AFSO – 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
c. 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
bb. OMB – Office of Management and Budget
c. OPR – Office of Primary Responsibility
d. PA – Privacy Act
e. PAM – Privacy Act Monitor
f. PAS – Privacy Act Statement
g. RCS – Reports Control Symbol
h. SAF – Secretary of the Air Force
i. SAF/AA – The Administrative Assistant to the Secretary of the Air Force
j. SAF/AAIA – Policy Division, Director of Information Management
k. SAF/GCA – Assistant General Counsel for Civilian Personnel and Fiscal Law
l. SG – Surgeon General
m. SJA – Staff Judge Advocate
n. SP – Security Police
o. SSN – Social Security Number
p. US – United States
q. USAF – United States Air Force
s. VHA – Variable Housing Allowance

d. 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
Department of the Air Force, DoD

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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 6397 authorizes using the Social Security Number (SSN). Include this authority whenever the SSN is used to retrieve records.

g. Purpose(s). Describe the purpose of such 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. Show 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. Identify 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 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.

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

Exemptions. 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.

(1) Authority. 5 U.S.C. 552a(k)(2) and (k)(5).
(2) 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 which could hamper the identification of offenders and alleged offenders; and could jeopardize the safety and well-being of the family.

(3) System identifier and name: F053 AF R, Air Force Personnel Test 851, Test Answer Cards.
(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 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 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 (Detachments 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 which 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 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).

(b) [Reserved]

(i) Exception. 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.

(b) 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 Cadet Personnel Record (Active/Historical).
(ii) 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 APSF New 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 AP SP 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).

(iii) **Reasons.** To protect the identity of those who give information in confidence for personnel security and related investigations. Fear of harassment could cause them to refuse to give this information in the frank and open way needed to pinpoint areas in an investigation that should be expanded to resolve charges of questionable conduct.

(19) **System identifier and name:** F035 AP 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).
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 disclosure of information from these systems will be made on a case-by-case basis.

(21) System identifier and name: F036 AF DP

G, Military Equal Opportunity and Treatment

(i) Exemption: Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source. Portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(d), (e)(4)(H), and (f).

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

(iv) Reasons: (1) From subsection (d) because access to the records contained in this system would inform the subject of an investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection, and would present a serious impediment to law enforcement. In addition, granting individuals access to information collected while an Equal Opportunity and Treatment clarification/investigation is in progress conflicts with the just, thorough, and timely completion of the complaint, and could possibly enable individuals to interfere, obstruct, or mislead those clarifying/investigating the complaint.

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

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

(4) 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.
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The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from this system will be made on a case-by-case basis.


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, 2385 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 management 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 management 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.
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Subpart B—Use of Military Forces in Civil Defense, Civil Disturbances, and Disasters

809a.5 Definitions.
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809a.8 Military Commanders’ responsibilities.

Subpart C—Special Considerations for Overseas Areas

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

§ 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.


§ 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.


§ 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
Section 809a.7

§ 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 occurs in areas in which the U.S. Air Force is the executive agent of the United States.

(b) A disaster or disturbance occurs in areas that are remote from an Army installation but near an Air Force installation, thereby necessitating Air Force assumption of responsibility pending arrival of Army personnel.

(c) The overriding demand of conditions resulting from a natural disaster compels immediate action to protect life and property and to restore order.

§ 809a.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.


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 FR 18729, Sept. 15, 1972]
SUBCHAPTER B—SALES AND SERVICES

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

Sec. 811.1 Exceptions.
811.2 Release of visual information materials.
811.3 Official requests for visual information productions or materials.
811.4 Selling visual information materials.
811.5 Customers exempt from fees.
811.6 Visual information product/material loans.
811.7 Collecting and controlling fees.
811.8 Forms prescribed and availability of publications.

AUTHORITY: 10 U.S.C. 8013.
SOURCE: 65 FR 64619, Oct. 30, 2000, unless otherwise noted.

§ 811.1 Exceptions.
The regulations in this part do not apply to:
(a) Visual information (VI) materials made for the Air Force Office of Special Investigations for use in an investigation or a counterintelligence report. (See Air Force Instruction (AFI) 90–301, The Inspector General Complaints, which describes who may use these materials.)
(b) VI materials made during Air Force investigations of aircraft or missile mishaps according to AFI 91–204, Safety Investigations and Reports. (See AFI 90–301.)

§ 811.2 Release of visual information materials.
(a) Only the Secretary of the Air Force for Public Affairs (SAF/PA) clears and releases Air Force materials for use outside Department of Defense (DoD), according to AFI 35–205, Air Force Security and Policy Review Program.
(b) The Secretary of the Air Force for Legislative Liaison (SAF/LL) arranges the release of VI material through SAF/PA when a member of Congress asks for them for official use.
(c) The International Affairs Division (HQ USAF/CVAII) or, in some cases, the major command (MAJCOM) Foreign Disclosure Office, must authorize

release of classified and unclassified materials to foreign governments and international organizations or their representatives.

§ 811.3 Official requests for visual information productions or materials.
(a) Send official Air Force requests for productions or materials from the DoD Central Records Centers by letter or message. Include:
(1) Descriptions of the images needed, including media format, dates, etc.
(2) Visual information record identification number (VIRIN), production, or Research, development, test, and evaluation (RDT&E) identification numbers, if known.
(3) Intended use and purpose of the material.
(4) The date needed and a statement of why products are needed on a specific date.
(b) Send inquiries about motion picture or television materials to the Defense Visual Information Center (DVIC), 1363 Z Street, Building 2730, March ARB, CA 92518–2703.
(c) Send Air Force customer inquiries about still photographic materials to 11 CS/SCUA, Bolling AFB, Washington, DC 20332–0403 (the Air Force accessioning point).
(d) Send non-Air Force customers’ inquiries about still photographic materials to the DVIC.

§ 811.4 Selling visual information materials.
(a) Air Force VI activities cannot sell materials.
(b) HQ AFCIC/TTSN may approve the loan of copies of original materials for federal government use.
(c) Send requests to buy:
(1) Completed, cleared, productions, to the National Archives and Records Administration, National Audiovisual Center, Information Office, 8700 Edgeworth Drive, Capitol Heights, MD 20722–3701.
(2) Nonproduction VI motion media to the DVIC. The center may sell other Air Force VI motion picture and television materials, such as historical and stock footage. When it sells VI motion
§ 811.5 Customers exempt from fees.

Title III of the 1968 Intergovernmental Cooperation Act (42 U.S.C. 4201, 4231, and 4233) exempts some customers from paying for products and loans. This applies if the supplier has sufficient funds and if the exemption does not impair its mission. The requesting agency must certify that the materials are not commercially available. When requests for VI material do not meet exemption criteria, the requesting agency pays the fees. Exempted customers include:


(b) Members of Congress asking for VI materials for official activities.

(c) VI records center materials or services furnished according to law or Executive Order.

(d) Federal, state, territorial, county, municipal governments, or their agencies, for activities contributing to an Air Force or DoD objective.

(e) Nonprofit organizations for public health, education, or welfare purposes.

(f) Armed Forces members with a casualty status, their next of kin, or authorized representative, if VI material requested relates to the member and does not compromise classified information or an accident investigation board’s work.

(g) The general public, to help the Armed Forces recruiting program or enhance public understanding of the Armed Forces, when SAF/PA determines that VI materials or services promote the Air Force’s best interest.

(h) Incidental or occasional requests for VI records center materials or services, including requests from residents of foreign countries, when fees would be inappropriate. AFI 16–101, International Affairs and Security Assistance Management, tells how a foreign government may obtain Air Force VI materials.

(i) Legitimate news organizations working on news productions, documentaries, or print products that inform the public on Air Force activities.

§ 811.6 Visual information product/material loans.


(1) For unclassified products, use your organization’s letterhead, identify subject title, PIN, format, and quantity.

(2) For classified products, use your organization’s letterhead, identify subject title, personal identification number (PIN), format, and quantity. Also, indicate that either your organization commander or security officer, and MAJCOM VI manager approve the need.

(b) You may request other VI materials, such as, still images and motion media stock footage, from DVIC/OM–PA, 1363 Z Street, Building 2730, March ARB, CA 92518–2703.

§ 811.7 Collecting and controlling fees.

(a) The DoD records centers usually collect fees in advance. Exceptions are sales where you cannot determine actual cost until work is completed (for example, television and motion picture services with per minute or per footage charges).

(b) Customers pay fees, per AFR 177–108, Paying and Collecting Transactions at Base Level, with cash, treasury check, certified check, cashier’s check, bank draft, or postal money order.

§ 811.8 Forms prescribed and availability of publications.

(a) AF Form 833, Visual Information Request, AF Form 1340, Visual Information Support Center Workload Report, DD Form 1995, Visual Information (VI) Production Request and Report,
§ 813.1 Purpose of the visual information documentation (VIDOC) program.

Using various visual and audio media, the Air Force VIDOC program records important Air Force operations, historical events, and activities for use as decision making and communicative tools. VIDOC of Air Force combat operations is called COMCAM documentation. Air Force publications are available at NTIS, 5285 Port Royal Road, Springfield, VA 22161 or online at http://www.afpubs.hq.af.mil. DoD publications are available at http://www.defenselink.mil/pubs.

§ 813.2 Sources of VIDOC.

(a) HQ AMC active and reserve combat camera (COMCAM) forces, both ground and aerial, whose primary goal is still and motion media documentation of Air Force and air component combat and combat support operations, and related peacetime activities such as humanitarian actions, exercises, readiness tests, and operations.

(b) Visual information forces with combat documentation capabilities from other commands: HQs ACC, AETC, AFRES, and AFSPACECOM.

(c) Communications squadron base visual information centers (BVISCs).

(d) Air Digital Recorder (ADR) images from airborne imagery systems, such as heads up displays, radar scopes, and images from electro-optical sensors carried aboard aircraft and weapons systems.

(e) Photography of Air Force Research, Development, Test & Evaluation (RDT&E) activities, including high speed still and motion media optical instrumentation.

§ 813.3 Responsibilities.

(a) HQ AFCIC/ITSM:

(1) Sets Air Force VIDOC policy.

(2) Oversees United States Air Force (USAF) COMCAM programs and combat readiness.

(3) Makes sure Air Force participates in joint actions by coordinating with the Office of the Secretary of Defense staff, Joint Chiefs of Staff (JCS), executive departments, and other branches of the United States Government.

(4) Approves use of Air Force COMCAM forces in non-Air Force activities.

(b) Air components:

(1) Manage air component COMCAM and visual information support within their areas of responsibility. Documents significant events and operations for theater and national-level use.

(2) Sets requirements for COMCAM and VI support. Includes requirements in operations plans (OPLAN) force lists, concept plans (CONPLAN), operations orders (OPORD), and similar documents. See Air Force Manual (AFMAN) 10–401, Operation Plan and Concept Plan Development and Implementation.

(3) Coordinate with MAJCOM VI managers to plan and source VIDOC forces for war, contingencies, and exercises.

(4) Provide input (VI and COMCAM requirements) to HQ AMC/SCMV, 203 West Losey Street, Room 3180, Scott AFB, IL 62225-5223, as required to develop the annual VI Exercise Support Plan. Include requirements to exercise
VI forces to refine operational procedures and meet defined objectives.

(c) HQ AMC:
(1) Provides primary Air Force ADR theater support to the air component commanders.
(2) Maintains a deployable theater support Unified Transportation Command (UTC) to manage ADR requirements above the aviation wing level. This includes the gathering, editing, copying, and distribution of ADR images from combat aviation squadrons for operational analysis, bomb damage assessment, collateral intelligence, training, historical, public affairs, and other needs.
(3) Sets combat training standards and develops programs for all Air Force COMCAM personnel (includes both formal classroom and field readiness training).
(4) Coordinates and meets COMCAM needs in war, operations, and concept plans.
(5) Provides the Air Force’s primary COMCAM capability and assists air component and joint commands with deliberate and crisis action planning for USAF’s COMCAM assets.
(6) Provides component and theater commands COMCAM planning assistance and expertise for contingencies, humanitarian actions, exercises, and combat operations.
(7) Acts as manpower and equipment force packaging (MEFPak) manager for COMCAM UTCs.
(8) Funds HQ AMC COMCAM personnel and equipment for contingency or wartime deployments. (The requester funds temporary duty and supply costs for planned events, such as non-JCS exercises and competitions.)
(9) Develops and monitors the annual Air Force-wide VI Exercise Support Plan for the Air Staff, with assistance from air components and supporting MAJCOMs. (Use criteria contained in §813.4(e)(1) and provide equitable deployment opportunity for tasked commands’ VI resources.)
(10) Develops and monitors the annual MAJCOM VI managers:
(1) Plan and set policy for documenting activities of operational, historical, public affairs, or other significance within their commands.
(2) Train and equip VIDOC forces to document war, contingencies, major events, Air Force and joint exercises, and weapons tests.
(3) Make sure COMCAM and BVISC forces meet their wartime tasking and identify and resolve deficiencies. Refer significant deficiencies and problems and proposed resolution to HQ AFCIC/ITS.
(4) Allow documentation of significant Air Force activities and events, regardless of their sensitivity or classification. Protect materials as the supported command directs. Safeguard classified images or handle them according to Department of Defense (DoD) Directive 5200.1, DoD Information Security Program, June 7, 1982, with Changes 1 and 2, and AFI 31–401, Information Security Program Management. The authority in charge of the event or operation approves documentation distribution.
(5) Update UTC availability in MAJCOM information systems.
(6) Assist Air Force Operations Group, in identifying the command’s capability to support COMCAM and VI requirements.
(7) Provide inputs to HQ AMC/SCMV for the annual VI Exercise Support Plan for JCS exercises.
(8) Make sure units that have deployable VI teams have Status of Resources and Training System (SORTS) reportable designed operational capability (DOC) statements that accurately reflect their mission and taskings.
(9) Develop and oversee measurements, such as operational readiness inspection criteria, to evaluate VI force readiness at DOC-tasked units.

§813.4 Combat camera operations.
(a) Air Force COMCAM forces document Air Force and air component activities.
(b) The supported unified command or joint task force commander, through the air component commander (when assigned), controls Air Force COMCAM forces in a joint environment. If an air component is assigned, the air component normally manages documentation of its operations. Air Force COMCAM and visual information
§ 813.7 Readiness reporting.

All Air Force units assigned a DOC statement report readiness status through the SORTS process. See AFI 10–201, Status of Resources and Training System, for specific information and reporting criteria.
SUBCHAPTER 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.
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841.6 Restrictions and conditions.
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841.11 Publication requirements.
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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.
§ 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:
§ 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
§ 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 \textit{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 \textit{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 inconsistent 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 privileged and confidential and not subject to disclosure under 5 U.S.C. 552.

PART 842—ADMINISTRATIVE CLAIMS

Sec. 842.0 Scope.

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

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

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

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

§ 842.2 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,
§ 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 thorough 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 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.

(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 USAF. Headquarters, United States Air Forces in Europe, Ramstein Air Base, Germany, APO NY 09012–5001.

§ 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, one claimant must file a claim for each cause of action.
§ 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:
   (2) SJA 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) SJA of PACAF and USAFE.
   (3) SJA of organizations exercising GCM authority.
   (4) SJA 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) SJA 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.

§ 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) Sets 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) Sets 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 sub-standard 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.
§ 842.24 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.

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

(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:

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

(ii) At offbase quarters overseas.

(iii) At other authorized places.

(2) Government shipment:

(i) To or from overseas 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
§ 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
§ 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:
       (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 re-evaluate 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.
§ 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
§ 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 or 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:
§ 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) 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.

(1) 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 non-appropriated 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, 302, 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 1964.

(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
§ 842.51 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:

2. Foreign 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.

(b) General information: (1) The measure of damages 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 suits 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 tort-feasor. 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
§ 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.

(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.
§ 842.66                                  32 CFR Ch. VII (7–1–01 Edition)

(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 expenses 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:


(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. 170.) 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 inhabitants, 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, Deputy 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.


§ 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 commercial ocean transportation of DOD cargo, mail, and personnel is an admiralty contract.
(b) General average. General average is the admiralty rule that when some one’s property is thrown overboard 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.

§ 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.


§ 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:
§ 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. Unsuccessful negotiations at one level do not bind higher authority.

(b) 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.

§ 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.

§ 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 non-appropriated 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.

(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.

§ 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 non-appropriated fund property assertable under other provisions.

(d) Loss or damage caused by an employee of an instrumentality of the
§ 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.
§ 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
§ 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 mortgagees, 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 overseas 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).


§ 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.

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

(f) 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.

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

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

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

(j) Claims for patent or copyright infringement.

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

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

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

(n) Claims in litigation against the United States.

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

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

(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.
§ 842.112 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.
§ 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, compromise, 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.
§ 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
§ 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 hardship 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.

(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 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.

§ 842.117(e) for claims involving waiver and compromise of amounts in excess of settlement authorities’ delegated amounts.)
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 settlement 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 non-appropriated funds (NAF), or with a combination of appropriated funds and NAFs.

(c) **Nonappropriated funds.** Non-appropriated 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 fund 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.
§ 842.133 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.

(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.

§ 842.134 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 Non-appropriated 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 669202, Dallas, TX 75266–6920.

(2) Claims payable for $2500 or less: AAFES Operations Center (OSC-AC),
§ 842.140 Proper claimants.

(a) Anyone suffering property damage, personal injury, or death arising out of 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) 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.


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.
§ 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 SJA 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 bankruptcy will result if the Air Force does not make an advance payment.

(c) Other resources for such needs are not reasonably available.
§ 845.3
(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.
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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.


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.
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 other 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
§ 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]
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.

(b) 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
§ 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.
§ 855.5

(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 2406, 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)(ii)(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/XO0BC). HQ USAF/ XO0BC 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.
§ 855.6 Aircraft exempt from the requirement for a civil aircraft landing permit.

(a) Any aircraft owned by:

(1) Any other US Government agency.


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.

(b) Any civil aircraft under:

(1) Lease or contractual agreement for exclusive US Government use on a long-term basis and operated on official business by or for a US Government agency; for example, the Federal

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32 CFR Ch. VII (7–1–01 Edition)
§ 855.11 Insurance requirements.

Applicants must provide proof of third-party liability insurance on a DD Form 2400, with the amounts stated in
§ 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.

§ 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.

   (ii) Ensures that DD Form 2402 is completed by each user.

   (ii) Ensures that DD Form 2402 is completed by each user.

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.

   Regardless of the aircraft’s historic military significance, DD Forms 2400, 2401, and 2402 must be submitted and approved before the performance. The permit can be approved at MAJCOM, FOA, DRU, or installation level. Use will be authorized only for the period of the event. Fly-in procedures do not apply to aircraft transporting passengers (revenue or non-revenue) for the purpose of attending the open house or demonstration flights associated with marketing a product.

§ 855.14 Unauthorized landings.

(a) Unauthorized landing procedures.

The installation commander or a designated representative will identify an unauthorized landing as either an emergency landing, an inadvertent landing, or an intentional landing. An
unauthorized landing may be designated as inadvertent or intentional whether or not the operator has knowledge of the provisions of this part, and whether or not the operator filed a 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 USAFO 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 PSSO 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 DFSC Assigned Item Procedures4).

(c) Inadvertent unauthorized landings. (1) The installation commander or a designated representative may determine a landing to be inadvertent if the aircraft operator:

(i) Landed due to flight disorientation.

(ii) Mistook the Air Force airfield for a civil airport.

(2) Normal landing fees must be charged and an unauthorized landing fee may be assessed to compensate the Government for the added time, effort, and risk involved in the inadvertent landing. Only the unauthorized landing fee may be waived by the installation commander or a designated representative if, after interviewing the pilot-in-command and appropriate Government personnel, it is determined that flying safety was not significantly impaired. The pilot-in-command may appeal the imposition of an unauthorized landing fee for an inadvertent landing to the MAJCOM, FOA, or DRU whose decision will be final. A subsequent inadvertent landing will be processed as an intentional unauthorized landing.

(d) Intentional unauthorized landings. (1) The installation commander may categorize an unauthorized landing as intentional when there is unequivocal evidence that the pilot deliberately:

(i) Landed without an approved DD Form 2401 on board the aircraft.

4See footnote 1 to §855.6.
§ 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
§ 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, 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, and AFR 177–102, paragraph 28.24, Commercial Transactions at Base Level. 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.

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

§ 855.20 Joint-use agreements.

An agreement between the Air Force and a local Government agency is required before a community can establish a public airport on an Air Force airfield.

(a) Joint use of an Air Force airfield will be considered only if there will be no cost to the Air Force and no compromise of mission capability, security, readiness, safety, or quality of life. Further, only proposals submitted by authorized representatives of local Government agencies eligible to sponsor a public airport will be given the comprehensive evaluation required to conclude a joint use agreement. All reviewing levels will consider and evaluate such requests on an individual basis.

(b) Generally, the Air Force is willing to consider joint use at an airfield if it does not have pilot training, nuclear storage, or a primary mission that requires a high level of security. Civil operations must begin within 5 years of the effective date of an agreement. Operational considerations will be based on the premise that military aircraft will receive priority handling (except in emergencies), if traffic must be adjusted or resequenced. The Air Force normally will not consider personnel increases solely to support civil operations but, if accommodated, all costs must be fully reimbursed by the joint-use sponsor. The Air Force will not provide personnel to install, operate, maintain, alter, or relocate navigation equipment or aircraft arresting systems for the sole use of civil aviation. Changes in equipment or systems to support the civil operations must be funded by the joint-use sponsor. The Air Force must approve siting, design, and construction of the civil facilities.

§ 855.21 Procedures for sponsor.

To initiate consideration for joint use of an Air Force airfield, a formal proposal must be submitted to the installation commander by a local Government agency eligible to sponsor a public airport. The proposal must include:

(a) Type of operation.

(b) Type and number of aircraft to be located on or operating at the airfield.

(c) An estimate of the number of annual operations for the first 5 years.

§ 855.22 Air Force procedures.

(a) Upon receipt of a joint-use proposal, the installation commander, without precommitment or comment, will send the documents to the Air Force Representative (AFREP) at the Federal Aviation Administration (FAA) Regional Office within the geographical area where the installation is located. AFI 13–201, Air Force Airspace Management, lists the AFREPs and

5 See footnote 1 to §855.6.
6 See footnote 1 to §855.6.
7 See footnote 1 to §855.6.
8 See footnote 1 to §855.6.
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.

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. All real property outleases require payment of fair market consideration and normally are processed through the Corps of Engineers. The General Services Administration must be contacted regarding availability of excess or surplus Federal real property and an application submitted through FAA for an airport use public benefit transfer under 49 U.S.C. §§47151–47153.

(10) Sponsor’s resources to pay a proportionate share of costs for runway operation and maintenance and other jointly used facilities or otherwise provide compensation that is of direct benefit to the Government.

(e) When the Air Force determines that joint use may be compatible with its defense mission, the environmental impact analysis process must be completed before a final decision can be made. The Air Force will act as lead agency for the preparation of the environmental analysis (32 CFR part 989, Environmental Impact Analysis Process). The local Government agency representatives, working in coordination with Air Force personnel at the installation and other concerned local or Federal officials, must identify the proposed action, develop conceptual alternatives, and provide planning, socioeconomic, and environmental information as specified by the appropriate MAJCOM and HQ USAF/CEVP. The information must be complete and accurate in order to serve as a basis for the preparation of the Air Force environmental documents. All costs associated with the environmental studies required to complete the environmental impact analysis process must be paid by the joint use sponsor. Information on environmental analysis requirements is available from HQ USAF/CEVP, 1260 Air Force Pentagon, Washington DC 20330–1260.

(f) HQ USAF/XOOBC can begin negotiating a joint-use agreement after the environmental impact analysis process is completed. The agreement must be
§ 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—Purposes of Use/Verification/Approval Authority/Fees

<table>
<thead>
<tr>
<th>Purpose of use</th>
<th>Verification</th>
<th>Approval authority</th>
<th>Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
<td>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.</td>
<td>1 No.</td>
<td></td>
</tr>
<tr>
<td>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.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>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 aero batic demonstrations.).</td>
<td>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.</td>
<td>1 No.</td>
<td></td>
</tr>
<tr>
<td>Aerial performance (BB). Aircraft performing aerobatics and or fly-bys at Air Force airfields.</td>
<td>Approval of MAJCOM, FOA, or DRU and FAA as specified in AFI 35–201, Community Relations.</td>
<td>1 No.</td>
<td></td>
</tr>
</tbody>
</table>

10 See footnote 1 to §856.6.
<table>
<thead>
<tr>
<th>Purpose of Use</th>
<th>Verification</th>
<th>Approval Authority</th>
<th>Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>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. 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. Dependent 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. 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. 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. 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. Civil Air Patrol (CAP) (H). CAP members operating personal or CAP aircraft for official CAP activities. Aero club members (I). Individuals operating their own aircraft at the Air Force airfield where they hold active aero club membership. 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.</td>
<td>Social security number in block 1 on DD Form 2401. Endorsement from member’s commander that validates military status and requirement for use of Air Force airfields listed on the DD Form 2401. Identification card (DD Form 1173) number or social security number, identification card expiration date, and a letter of endorsement from sponsor. 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. Copy of retirement orders on file with the approving authority. Identification card (DD Form 1173) number or social security number, identification card expiration date, and a letter of endorsement from sponsor. Endorsement of the application by HQ CAP-USAF/XOO, 105 South Hansell Street, Maxwell AFB AL 36112–6332. Membership validation by the aero club manager on the DD Form 2401. 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.</td>
<td>1 No. 1 No. 1 No. 1 No. 1 No. 1 No. 1 No. 1 Yes</td>
<td></td>
</tr>
</tbody>
</table>
### TABLE 1—PURPOSE OF USE/VERIFICATION/APPROVAL AUTHORITY/FEES—Continued

<table>
<thead>
<tr>
<th>Purpose of use</th>
<th>Verification</th>
<th>Approval* authority</th>
<th>Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Note: Scheduled air carriers are defined at At-tachment 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 command 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.).</td>
<td>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. Participant in the Craf program and authorized by contract.</td>
<td>3 No.</td>
<td>2 Yes.</td>
</tr>
<tr>
<td>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).</td>
<td>The chartering agency and name, address, and telephone number of the Government official procuring the transportation must be listed in block 4 of the DF 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.</td>
<td>1 No.</td>
<td></td>
</tr>
<tr>
<td>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.</td>
<td>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.</td>
<td>1 No.</td>
<td></td>
</tr>
<tr>
<td>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.</td>
<td>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 62225–5302). 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.)</td>
<td>1 No.</td>
<td></td>
</tr>
<tr>
<td>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.</td>
<td>Except for White House Press Corps charters, concurrence of the installation commander, base operations officer, and public affairs officer.</td>
<td>2 Note 1.</td>
<td></td>
</tr>
<tr>
<td>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.).</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Table 1—Purpose of Use/Verification/Approval Authority/Fees—Continued

<table>
<thead>
<tr>
<th>Purpose of use</th>
<th>Verification</th>
<th>Approval authority</th>
<th>Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial aircraft certification testing required by the FARs that only involves use of normal flight facilities (P). Commercial development testing at Air Force flight test facilities (Q) as described in AFI 99–101, Development Test &amp; Evaluation.</td>
<td>Application must cite the applicable FAR, describe the test, and include the name and telephone number of the FAA certification officer. 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.</td>
<td>2 Yes.</td>
<td>1 Yes.</td>
</tr>
<tr>
<td>Commercial charter operations (R). Aircraft transporting passengers or cargo for hire for other than US military departments.</td>
<td>Unavailability of:</td>
<td>5 Yes.</td>
<td></td>
</tr>
<tr>
<td>a. a suitable civil airport,</td>
<td>b. aircraft that could operate into the local civil airport, or</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. other modes of transportation that would reasonably satisfy the transportation requirement.</td>
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<tr>
<td>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:</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>c. Air taxi operations under FAR, Part 135.</td>
<td>Note: This is currently under review. Anticipate a change that will eliminate the air taxi exemption.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>d. Air carrier operations in support of contract flights exclusively for the US military departments.</td>
<td>Memorandum of Understanding approved by HQ USAF/XOOBC that establishes conditions and responsibilities in conducting the training flights.</td>
<td>2 Yes.</td>
<td></td>
</tr>
<tr>
<td>Commercial air crew training flights (S). Aircraft operated by commercial air carrier crews for the purpose of maintaining required proficiency.</td>
<td>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.</td>
<td>4 Note 2.</td>
<td></td>
</tr>
<tr>
<td>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.</td>
<td>Memorandum of Understanding, Letter of Agreement, or lease that establishes responsibilities and conditions for use.</td>
<td>2 Yes.</td>
<td></td>
</tr>
<tr>
<td>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.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreign government charter (V). Aircraft chartered by a foreign government to transport passengers or cargo.</td>
<td>Application must include name and telephone number of the foreign government representative responsible for handling the charter arrangements. FMS case number, requisition numbers, delivery term code and information as specified below:</td>
<td>2 Note 3.</td>
<td></td>
</tr>
<tr>
<td>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.</td>
<td>b. Name, address, and telephone number of individual at Air Force base that is coordinating cargo handling and or other required terminal services.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Flights transporting foreign military sales (FMS) material (W). (Hazardous, oversized, or classified cargo only.)</td>
<td></td>
<td>2 Note 3.</td>
<td></td>
</tr>
</tbody>
</table>
### Purpose of Use/Verification/Approval Authority/Fees—Continued

<table>
<thead>
<tr>
<th>Purpose of Use</th>
<th>Verification</th>
<th>Approval Authority</th>
<th>Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>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 build up 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.</td>
<td></td>
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</tr>
<tr>
<td>d. US Government FMS case management agency to which costs for services rendered are chargeable.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>e. Name, address, and telephone number of freight forwarder.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>f. Name, address, and telephone number of shipper.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Certified flight record attempts (X). Aircraft operating to establish a new aviation record.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>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 overflight 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:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Provide minimum official welcoming party.</td>
<td></td>
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</tr>
<tr>
<td>b. Not provide special facilities.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. Not permit political rallies or speeches on the installation.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>d. Not provide official transportation to unauthorized personnel, such as the press or local populace.</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>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).</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>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.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 Yes.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 Yes.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 No.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Approving Authority:
1=Can be approved at all levels.
2=HQ USAF/XO0BC.
3=HQ AMC/OD/AA.
4= Except as specifically delegated in paragraphs 2.4.2 and 2.4.2.3, must be approved by HQ USAF/XO0BC.
5=Except as specifically delegated in paragraph 2.4.2.1, must be approved by HQ USAF/XO0BC.
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

<table>
<thead>
<tr>
<th>Aircraft maximum gross takeoff weight (MGTOW)</th>
<th>Coverage for Bodily injury</th>
<th>Property damage</th>
<th>Passenger</th>
</tr>
</thead>
<tbody>
<tr>
<td>12,500 Pounds and Under</td>
<td>Each Person: $100,000</td>
<td>$100,000</td>
<td>$100,000, 100,000 multiplied by the number of passenger seats.</td>
</tr>
<tr>
<td></td>
<td>Each Accident: 300,000</td>
<td>100,000</td>
<td>100,000 multiplied by 75% multiplied by the number of passenger seats.</td>
</tr>
<tr>
<td>More than 12,500 Pounds</td>
<td>Each Person: 100,000</td>
<td>100,000</td>
<td>100,000</td>
</tr>
<tr>
<td></td>
<td>Each Accident: 1,000,000</td>
<td>1,000,000</td>
<td>1,000,000</td>
</tr>
</tbody>
</table>

## TABLE 3—LANDING FEES

<table>
<thead>
<tr>
<th>Aircraft Maximum Gross Takeoff Weight (MGTOW)</th>
<th>Normal fee</th>
<th>Unauthorized fee</th>
<th>Intentional fee</th>
<th>Minimum fee</th>
<th>United States, Territories, and Possessions</th>
<th>Overseas</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to and including 12,500 lbs</td>
<td>$1.50 per 1,000 lbs MGTOW or fraction thereof</td>
<td>$20.00</td>
<td>$25.00</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>12,501 to 40,000 lbs</td>
<td>$1.70 per 1,000 lbs MGTOW or fraction thereof</td>
<td>$20.00</td>
<td>$25.00</td>
<td>X</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Over 40,000 lbs</td>
<td>$100.00</td>
<td>$300.00</td>
<td>$600.00</td>
<td>$100.00</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td></td>
<td>Increase unauthorized fee by 150% or 200%</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

## TABLE 4—PARKING AND STORAGE FEES

<table>
<thead>
<tr>
<th>Fee per aircraft for each 24-hour period or less</th>
<th>Minimum fee</th>
<th>Charge begins</th>
<th>Ramp</th>
<th>Hangar</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1.00 per 100,000 lbs MGTOW or fraction thereof</td>
<td>$20.00</td>
<td>6 hours after landing</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>$2.00 per 100,000 lbs MGTOW or fraction thereof</td>
<td>20.00</td>
<td>Immediately</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

---

**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 64–103, Museum System
- AFI 90–101, Air Force Relations with Congress
- AFI 99–101, Development Test and Evaluation
- AFJ 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 Operations of Small Aircraft
- FAR, Part 139, Certification and Operations: Land Airports Serving Certain Air Carriers

### Section B—Abbreviations and Acronyms

<table>
<thead>
<tr>
<th>Abbreviations and acronyms</th>
<th>Definitions</th>
</tr>
</thead>
<tbody>
<tr>
<td>AFI</td>
<td>Air Force Instruction</td>
</tr>
</tbody>
</table>
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 I, 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
DOBBSN AFB GA
DYESS AFB TX
EARECKSON AFS AK *
EGLIN AFB FL
EI ELSON AFB AK
ELLSWORTH AFB SD
ELMENDORF AFB AK
FAIRCHILD AFB WA
GRAND FORKS AFB ND
HILL AFB UT
HOWARD AFB PA
Kadena AB OKINAWA
KELLY AFB TX
KUNSAN AB KOREA
LANGLEY AFB VA
LAUGHLIN AFB TX
MALMSTROM AFB MT
McCHORD AFB WA
McCONNELL AFB KS
MINOT AFB ND
MT HOME AFB ID
NELLIS AFB NV
OFFUTT AFB NE
OSAN AB KOREA
PLANT 42, PALMDALE CA
TRAVIS AFB CA
TYNDALL AFB FL
YOKOTA AB JAPAN

ATTACHMENT 3 TO PART 855—LANDING PERMIT APPLICATION INSTRUCTIONS

A3.1. DD Form 2400, Civil Aircraft Certificate of Insurance. The insurance company or its authorized agent must complete and sign the DD Form 2400. Corrections to the form made using a different typewriter, pen, or whiteout must be initialed by the signatory. THE FORM CANNOT BE COMPLETED BY THE AIRCRAFT OWNER OR OPERATOR. Upon expiration, the DD Form 2400 must be resubmitted along with DD Form 2401 for continued use of Air Force airfields. The DD Form 2400 may be submitted to the decision authority by either the user or insurer. (Approved by the Office of Management and Budget under control number 0701–0050).

A3.1.1. Block 1, Date Issued. The date the DD Form 2400 is completed by the signatory.

A3.1.2. Block 2a and 2b, Insurer Name, Address. The name and address of the insurance company.

A3.1.3. Block 3a and 3b. Insured Name, Address. The name and address of the aircraft owner and or operator. (The name of the user must be the same on all the forms.)

A3.1.4. Block 4a, Policy Number(s). The policy number must be provided. Binder numbers or other assigned numbers will not be accepted in lieu of the policy number.

A3.1.5. Block 4b, Effective Date. The first day of current insurance coverage.

A3.1.6. Block 4c, Expiration Date. The last day of current insurance coverage. The DD Form 2400 is valid until one day before the insurance expiration date. A DD Form 2400 with the statement “until canceled,” in lieu of a specific expiration date, is valid for two years from the issue date.

A3.1.7. Block 5, Aircraft Liability Coverage. The amount of split limit coverage. All boxes in block 5 must be completed to specify the coverage for: each person (top line, left to right) outside the aircraft (bodily injury) and each passenger; and the total coverage per accident (second line, left to right) for: persons outside the aircraft (bodily injury), property damage, and passengers. IF BLOCK 5 IS USED, BLOCK 6 SHOULD NOT BE USED. All coverages must be stated in US dollars. ALL SEATS THAT CAN BE USED FOR PASSENGERS MUST BE INSURED. See Table 2 for required minimum coverage.

A3.1.8. Block 6, Single Limit. The maximum amount of coverage per accident. IF BLOCK 6 IS USED, BLOCK 5 SHOULD NOT BE USED. The minimum coverage required for a combined single limit is determined by adding the minimums specified in the “each accident” line of Table 2. All coverages must be stated in US dollars. ALL SEATS THAT CAN BE USED FOR PASSENGERS MUST BE INSURED.

A3.1.9. Block 7, Excess Liability. The amount of coverage which exceeds primary coverage. All coverages must be stated in US dollars.

A3.1.10. Block 8, Provisions of Amendments or Endorsements of Listed Policy(ies). Any
modification of this block by the insurer or insured invalidates the DD Form 2400.

A3.1.11. Block 9a. Typed Name of Insurer's Authorized Representative. Individual must be an employee of the insurance company, or 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.


A3.1.15. 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.


A3.2.14. 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.

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 date 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.
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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. If a joint use, 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.


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 constructing 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 these 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, 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.

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 requirements, 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/XO0BC 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 delivered or mailed to Sponsor addressed: Sponsor, 9000 Airport Blvd, USA.
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

§ 861.1 References.
861.2 Purpose.
861.3 DOD commercial air carrier quality and safety requirements.
861.4 DOD Commercial Airlift Review Board procedures.


SOURCE: 57 FR 44683, Sept. 29, 1992, unless otherwise noted.

§ 861.1 References.
(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
(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.
§ 861.3  

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
§ 861.4 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.

(5) 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...
(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
§861.4  

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 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
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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.

PART 865—PERSONNEL REVIEW
BOARDS

Subpart A—Air Force Board for Correction of Military Records

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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.


(4) The AFBCMR, 1535 Command Drive, EE Wing 3rd Floor, Andrews AFB MD 20331–7002.

(c) Preparation. Before applying, applicants should:


(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) 7650.6, Whistleblower Protection Act, 3 September 1992, 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.

1Copies 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.
§ 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 DoD 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 Act apply.
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
§ 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 contentsions, 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 uncensored 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


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, 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.


§ 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.

§ 865.106 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, as specified in §865.113 of this subpart.
§ 865.106  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/MPF/OA1, 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.

(1) 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.
§ 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

(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.
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 representatives 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 temporary 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 by 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
§ 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.

§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
§ 865.111 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 response 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 describing 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:
§ 865.112

(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 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 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(1) (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
§ 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 Review Authority (SRA) under rules established by the Secretary of the Air Force.

(b) The following categories of discharge 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 Review 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 Matter 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.
§ 865.114 Decisional document.

(a) A decisional document shall be prepared for each review conducted by the DRB.

(b) At a minimum, the decisional document 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.
§ 865.118 Available 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.

§ 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 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 compulsory 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
§ 865.120

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:


(2) Special Discharge Review Program cases.


(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.

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§ 865.126  SUMMARY OF STATISTICS FOR AIR FORCE DISCHARGE REVIEW BOARD—Continued

RCS: DD-M(SA) 1499

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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

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/DPPRS, 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
§ 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 35–3).

(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/DPPRSO 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/DPPRSO 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/MIDR 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 APFC/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

Civilian or Contractual Group—An organization whose members rendered service to the U.S. Air Force or a predecessor organization during a period of armed conflict. In that capacity the members were considered civilian employees with the Armed Forces or contractors with the U.S. Government, providing direct support to the Armed Forces. An example of such a group is the Women’s Air Force Service Pilots, who were Federal civilian employees attached to the U.S. Army Air Force during World War II.
Discharge—Complete severance from the active military service. The discharge includes a reason and characterization of service.
Recognized Group—A group whose service the Secretary of the Air Force has determined was “active duty for the purposes of all laws administered by the Department of Veterans’ Affairs,” such as VA benefits under 38 U.S.C. 106.

PART 884—DELIVERY OF PERSONNEL TO UNITED STATES CIVILIAN AUTHORITIES FOR TRIAL

§ 884.0 Purpose.
This part establishes procedures for making Air Force members, civilian personnel, and family members available to U.S. civilian authorities for trial or specified court appearances. It implements 32 CFR part 146. This part does not confer any rights, benefits, privileges, or form of due process procedure upon any individuals.
§ 884.1 Authority.
A general court martial convening authority (GCMCA) may authorize delivery of a member of that command to Federal or state civil authorities. The GCMCA may delegate this authority to an installation or equivalent commander. See AFPD 51–10, Making Military Personnel, Employees, and Dependents Available to Civilian authorities,1 paragraphs 8 and 9 for sources of authority.

§ 884.2 Assigned responsibilities.
(a) The Under Secretary of Defense (USD), Personnel & Readiness (P&R), is the denial authority for all requests for return of members to the United States for delivery to civilian authorities when the request falls under § 884.9(e).
(b) The Air Force Judge Advocate General (TJAG) may approve requests that fall under § 884.9(e) or recommend denial of such requests. TJAG or a designee may approve or deny:
(1) Requests for return of members to the United States for delivery to civilian authorities when the request falls under § 884.9(f).
(2) Requests for delays of up to 90 days completing action on requests for return of members to the United States for delivery to civilian authorities.
(c) The Air Force Legal Services Agency’s Military Justice Division (HQ AFLSA/JAJM), 172 Luke Avenue, Suite 343, Bolling AFB, DC 20332–5113, processes requests for return of members to the United States for delivery to civilian authorities and notifies requesting authorities of decisions on requests. HQ AFLSA/JAJM completes action on requests within 30 days after receipt of the request, unless a delay is granted; they send all reports and notifications to the DoD General Counsel (DoD/GC), as required by this part; and they handle all communications with requesters.

§ 884.3 Placing member under restraint pending delivery.
Continue restraint only as long as is reasonably necessary to deliver the member to civilian authorities. See AFPD 51–10, paragraph 5. To determine whether probable cause exists and whether a reasonable belief exists that restraint is necessary, the commander should refer to the Manual for Courts-Martial (MCM), 1984, specifically, Rules for Courts-Martial (RCM) 305(h)(2)(B), and the discussion following it. The requirement for the formal review of restraint found in MCM 1984, RCM 305, and AFI 51–201, Military Justice Guide,2 does not apply.

§ 884.4 Release on bail or recognizance.
(a) Before delivering an Air Force member to a civilian authority, the commander or designee directs the member in writing to report to a designated Air Force unit, activity, or recruiting office for further instructions in the event the civilian authority releases the member (see § 884.17). The commander designates the member’s unit, if the civilian authority is in the immediate vicinity of the member’s base. The commander advises the designated Air Force unit, activity, or recruiting office of the situation. Once the member has been released and has reported to the designated authority, it immediately sends the member’s name, rank, Social Security number (SSN), organization, and other pertinent information to the member’s commander, who then provides further instructions.
(b) The member’s commander notifies the military personnel flight (MPF) of the situation. In turn, the MPF provides an information copy to the Air Force Personnel Center (AFPC) assignment office responsible for the member’s Air Force specialty code (AFSC), as listed in AFMAN 36–2105, Officer Classification,3 or AFMAN 36–2108, Airman Classification.3 If contact cannot be made with the member’s commander, the Air Force unit, activity, or recruiting office previously designated by the commander obtains instructions from HQ AFPC/DPMARS or DPMRPP2.
§ 884.5 Requests under the interstate agreement on Detainer’s Act.

When either the prisoner or state authorities make a request under the Detainer’s Act, follow the procedures in Title 18 U.S.C. App. Section 1, et seq. The Act applies only to a person who has entered upon a term of imprisonment in a penal or correctional institution and is, therefore, inapplicable to members in pretrial confinement.

§ 884.6 Requests by Federal authorities for military personnel stationed within the United States and its possessions.

(a) When Federal authorities request the delivery of service members, the Air Force will normally deliver service members when the request is accompanied by a warrant issued pursuant to the Federal Rules of Criminal Procedure, rule 4, or when a properly identified Federal officer represents that such a warrant has been issued.

(b) A U.S. marshal, deputy marshal, or other officer authorized by law will call for and take into custody persons desired by Federal authorities for trial. The officer taking custody must execute a statement in substantially the form set out in § 884.18.

§ 884.7 Requests by state and local authorities when the requested member is located in that state.

(a) The Air Force normally will turn over to the civilian authorities of the state, upon their request, Air Force members charged with an offense against state or local law. Each request by such civilian authorities for the surrender of a member of the Air Force should normally be accompanied by a copy of an indictment, information, or other document used in the state to prefer charges, or a warrant that reflects the charges and is issued by a court of competent jurisdiction.

(b) Before making delivery to civilian authorities of a state, the commander having authority to deliver will obtain a written agreement, substantially in the form of § 884.18, from a duly authorized officer of the state.

(c) Where the state authority cannot agree to one or more of the conditions set out in the form, the commander may authorize modification. The requirements of the agreement are substantially met when the state authority informs the accused’s commander of the accused’s prospective release for return to military authorities and when the state furnishes the accused transportation back to his or her station, together with necessary funds to cover incidental expenses en route. The accused’s commander provides copies of the statement or agreement of this section and in § 884.6(b) to the civilian authority to whom the member was delivered and to the Air Force unit, activity, or recruiting office nearest to the place of trial designated in the agreement as the point of contact in the event of release on bail or on recognizance (see § 884.4). The accused’s commander immediately notifies the civilian authority if the member has been discharged from the Air Force.

§ 884.8 Request for delivery by state authorities when the member is located in a different state.

(a) This part applies to members who are located in the United States. With respect to the extradition process, Air Force personnel have the same status as persons not in the Armed Forces. Accordingly, if a state other than the state in which the member is located requests the delivery of a military member, in the absence of a waiver of extradition process by the member concerned, that state must use its normal extradition procedures to make arrangements to take the individual into custody in the state where he or she is located.

(b) The Air Force will not transfer a military member from a base within one state to a base within another state for the purpose of making the member amenable to prosecution by civilian authorities.

§ 884.9 Requests for custody of members stationed outside the United States.

(a) Authority. This section implements Pub. L. 100–456, section 721(a), and DoD Directive 5525.9, December 27, 1988.

(b) The Air Force expects members to comply with orders issued by Federal or state court of competent jurisdiction, unless noncompliance is legally
§ 884.10 Returning members, employees, and family members from overseas.

The Air Force expects persons overseas wanted by Federal or state authorities to make themselves available to those authorities for disposition. If they do not, DoD Directive 5525.9, Compliance of DoD Members, Employees, and Family Members Outside the United States With Court Orders, 10 U.S.C. 814, and Pub. L. 100–456, section 721(a), authorize and require commanders to respond promptly to requests from civilian authorities for assistance in returning members, civilian employees, and family members from overseas.

§ 884.11 Procedures for return of an Air Force member to the United States.

(a) Include the following information in a request for return of an Air Force member to the United States for delivery to civilian authorities.

(1) Fully identify the member sought by providing the member's name, grade, SSN, and unit of assignment, to the extent the information is known.

(2) Specify the offense for which the member is sought. If the member is charged with a crime, specify the maximum punishment under the laws of the requesting jurisdiction. Specify whether the member is sought in connection with the unlawful or contemptuous taking of a child from the jurisdiction of a court or from the lawful custody of another person, the member’s commander will normally expeditiously return the member to the United States for delivery to the requesting authorities.

(1) A serious offense is defined as one punishable by confinement for more than 1 year under the laws of the requesting jurisdiction.

(2) Delivery of the member is not required if the controversy can be resolved without returning the member to the United States or if the request for delivery of the member is denied in accordance with this instruction.

(f) Ordinarily, do not return an Air Force member stationed outside the United States to the United States for delivery to civilian authorities if the offense is not specified in paragraph (e) of this section. TJAG may direct return when deemed appropriate under the facts and circumstances of the particular case.

(g) Before taking action under this section, give the member the opportunity to provide evidence of legal efforts to resist the court order or process sought to be enforced or otherwise to show legitimate cause for noncompliance.

§ 884.10 See footnote in §884.1

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8 See footnote in §884.1
§ 884.13 Denials of a request for return of a member to the United States.

(a) A request for return of a member to the United States for delivery to civilian authorities may be denied when:

(1) The member’s return would have an adverse impact on operational readiness or mission requirements.

(2) An international agreement precludes the member’s return.

(b) HQ AFLSA/JAJM notifies AFPC of the decision to return the member to the United States. AFPC issues permanent change of station (PCS) orders, assigning the member to an installation as close to the requesting jurisdiction as possible, considering the needs of the Air Force for personnel in the member’s rank and AFSC.

(c) HQ AFLSA/JAJM notifies requesting authorities of the member’s new assignment, port of entry into the United States and estimated time of arrival. Except during unusual circumstances, HQ AFLSA/JAJM notifies requesting authorities at least 10 days before the member’s return.

§ 884.12 Delays in returning members to the United States.

(a) On a request to return a member to the United States for delivery to civilian authorities, TJAG may grant a delay of not more than 90 days in completing action when one or more of the following are present:

(1) Efforts are in progress to resolve the controversy to the satisfaction of the requesting authorities without the member’s return to the United States.

(2) Additional time is required to permit the member to provide satisfactory evidence of legal efforts to resist the request or to show legitimate cause for noncompliance.

(3) Additional time is required to permit the commander to determine the specific effect of the loss of the member on command mission and readiness or to determine pertinent facts and circumstances relating to any international agreement, foreign judicial proceeding, DoD, Air Force, or other military department investigation or court-martial affecting the member.

(4) Other unusual facts or circumstances warrant delay.

(b) AFLSA/JAJM promptly reports all delays in cases falling under AFPD 51–10, paragraph 3, through SAF/GC and SAF/MI or USD/P&R and to DoD/GC.

(c) Delays in excess of 90 days are not authorized in cases falling under AFPD 51–10, paragraph 3, unless approved by USD/P&R.

§ 884.11 Process directing or authorizing the requesting authorities to take the member into custody. Also, include reports of investigation and other materials concerning the background of the case if reasonably available.

(4) Indicate whether the requesting authorities will secure the member’s lawful delivery or extradition from the port of entry to the requesting jurisdiction, whether they will do so at their own expense, and whether they will notify HQ AFLSA/JAJM of the member’s release from custody and of the ultimate disposition of the matter.

(5) Any U.S. attorney or assistant U.S. attorney, governor or other duly authorized officer of a requesting state or local jurisdiction, or the judge, magistrate, or clerk of a court of competent jurisdiction must sign the request.

(b) Civilian authorities making requests for return of members to the United States for delivery to them should direct their request to HQ AFLSA/JAJM. If another Air Force agency or official receives the request, immediately send it to HQ AFLSA/JAJM.

(c) Upon receipt of a request, HQ AFLSA/JAJM promptly notifies the member’s commander, who consults with the servicing staff judge advocate. The commander provides a report of relevant facts and circumstances and recommended disposition of the request through command channels to HQ AFLSA/JAJM. If the commander recommends denial of the request or a delay in processing or approving it, the commander provides the information specified in §884.12(a)(1) through (a)(4) or §884.13(a)(1) through (a)(4).

(d) After proper authority has approved a request for return of a member to the United States for delivery to civilian authorities, HQ AFLSA/JAJM notifies AFPC of the decision to return the member to the United States. AFPC issues permanent change of station (PCS) orders, assigning the member to an installation as close to the requesting jurisdiction as possible, considering the needs of the Air Force for personnel in the member’s rank and AFSC.

(e) HQ AFLSA/JAJM notifies requesting authorities of the member’s new assignment, port of entry into the United States and estimated time of arrival. Except during unusual circumstances, HQ AFLSA/JAJM notifies requesting authorities at least 10 days before the member’s return.

§ 884.13 Denials of a request for return of a member to the United States.

(a) A request for return of a member to the United States for delivery to civilian authorities may be denied when:

(1) The member’s return would have an adverse impact on operational readiness or mission requirements.

(2) An international agreement precludes the member’s return.

2See footnote in §884.1.
§ 884.14 Compliance with court orders by civilian employees and family members.

(a) The Air Force expects civilian employees and family members to comply with orders issued by Federal or state court of competent jurisdiction, unless noncompliance is legally justified. Air Force civilian employees who persist in noncompliance are subject to adverse administrative action, including separation for cause as provided in AFI 36–704, Discipline and Adverse Actions (PA).6

(b) Air Force officials ensure that civilian personnel and family members do not use assignments or officially sponsored residence outside the United States to avoid compliance with valid orders of Federal or state court of competent jurisdiction.

§ 884.15 Procedures involving a request by Federal or state authorities for custody of an overseas civilian employee or a command-sponsored family member.

(a) The procedures of this section apply to civilian employees, including nonappropriated fund instrumentality (NAFI) employees, who are assigned outside the United States, and to command-sponsored family members residing outside the United States.

(b) This section applies only when Air Force authorities receive a request for assistance from Federal, state, or local authorities involving noncompliance with a court order and when noncompliance is the subject of any of the following: An arrest warrant; indictment, information, or other document used in the jurisdiction to prefer charges; or a contempt citation involving the unlawful or contemptuous removal of a child from the jurisdiction of the court or the lawful custody of a parent or third party.

(c) To the maximum extent possible, consistent with provisions of international agreements and foreign court orders, DoD and military department investigations, and judicial proceedings, commanders comply with requests for assistance. After exhausting all reasonable efforts to resolve the matter without the employee or family member returning to the United States, the commander shall strongly encourage the individual to comply. The commander shall consider imposing disciplinary action (including removal) against the employee or withdrawing command sponsorship of the family member, as appropriate, for failure to comply.

§ 884.16 Reporting requests for assistance and action.

The commander or designee promptly reports each request for assistance and intended action by message. Send reports to HQ AFLSA/JAJM, which submits required reports, through channels, to USD/P&R. HQ AFLSA/JAJM conducts all communications with requesters.

§ 884.17 Commander’s instruction letter to member.

Subject: Instructions in Case of Release on Bail or Personal Recognizance

1. You are being delivered to the custody of civilian authorities, pursuant to the provisions of AFI 51–1001. This action does not constitute a discharge from the Air Force. In the event that you are released from civilian custody on bail or on your own recognizance, report immediately in person or by telephone to the (Air Force unit, activity, or recruiting office) for further instructions. Advise the commander of your name, rank,
§ 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.
§ 887.2 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 discharge 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.
§ 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 806.5 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:
§ 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 naturalization 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.
§ 901.5 (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 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.

§ 901.6 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.

§ 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, 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 Puerto 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
§ 901.11 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;

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 besieged 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.
§ 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. Selectees must be in active duty enlisted status when appointed as cadets.

(b) Reserve 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
§ 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; AP 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 USafa/DPPA notifies Members of Congress and the Vice President of offers of appointment. After HQ USafa/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/Rrs). 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 USafa/DPPA is notified of removal of conditional status from offer of appointment in order to notify nominating sources as stated above. USafa/Rrs completes admissions in-processing by:

1. Forwarding an appointment kit which includes detailed reporting instructions to each appointee.

2. Issuing invitation to travel orders.

3. Notifying the Directorate of Cadet Personnel (USafa/Dpyc) of Regular airmen appointees. Regular airmen in technical school completes all phases of training, if time permits, before reporting to the Academy. On graduation, the airmen remain at the technical school in casual status (unless otherwise directed by HQ AFmpc/Mprac1) until earliest reporting date for the Academy.

(b) The Department of Defense Medical Examination Review Board (Dodomerb) notifies applicants of their medical status. USafa/Rrs informs HQ USafa/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 airman 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 80915-0505. 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.
§ 903.3 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).
§ 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 overseas assignment.
6. Oversea volunteer status.
7. Assignment preferences.
8. Assignment deferment status.
10. Statement as to the airman’s possible appointment to another service academy.

(b) Air Force reservists are reassigned as follows:
§ 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.

(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/MPDCOB 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 Air Force Academy under the authority of this part and AFR 39–10.

(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 duty (usually, this is the date the applicant was administered the oath of enlistment). HQ ARPC/DPRPP will give copies of the orders to the CBFO/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/RSS. 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.
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.
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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;
§ 935.16

(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, and post traffic signs;
(p) 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;
(q) Establish records of vital statistics;
(r) Direct the registration and inspections of motor vehicles, boats, and aircraft;
(s) Deputize any person to serve as a Peace Officer;
(t) Impose quarantines;
(u) Direct the impoundment and destruction of unsanitary food, fish, or beverages;
(v) Direct the evacuation of any person from a hazardous area;
(w) Commission notaries public;
(x) Establish and maintain a facility for the restraint or confinement of persons and provide for their care;
(y) Direct the removal of any person from Wake Island for cause;
(z) Issue traffic regulations that are not inconsistent with this part, and post traffic signs;

§ 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
§ 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.

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.”
§ 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. 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) ______

§ 935.92 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 satisfy the judgment.
3. Third, the residue (if any) to the judgment 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
§ 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.

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;
§ 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;
§ 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).
§ 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 flammable 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
§ 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.
PART 989—ENVIRONMENTAL IMPACT ANALYSIS PROCESS (EIAP)

§ 989.1 Purpose.

(a) This part implements the Air Force Environmental Impact Analysis Process (EIAP) and provides procedures for environmental impact analysis both within the United States and abroad. Because the authority for, and rules governing, each aspect of the EIAP differ depending on whether the action takes place in the United States or outside the United States, this part provides largely separate procedures for each type of action. Consequently, the main body of this part deals primarily with environmental impact analysis under the authority of the National Environmental Policy Act of 1969 (NEPA) (Public Law 91–190, 42 United States Code (U.S.C.) Sections 4321 through 4347), while the primary procedures for environmental impact analysis of actions outside the United States in accordance with Executive Order (E.O.) 12114, Environmental Effects Abroad of Major Federal Actions, are contained in §§ 989.37 and 989.38.

(b) The procedures in this part are essential to achieve and maintain compliance with NEPA and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the NEPA (40 CFR Parts 1500 through 1508, referred to as the "CEQ Regulations"). Further requirements are contained in Department of Defense Directive (DoDD) 4715.1, Environmental Security, Department of Defense Instruction (DoDI) 4715.9, Environmental Planning and Analysis, DoDD 5000.1, Defense Acquisition, and Department of Defense Regulation 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information System Acquisition Programs. To comply with NEPA and complete the EIAP, the CEQ Regulations and this part must be used together.

(c) Air Force activities abroad will comply with this part, E. O. 12114, and 32 CFR Part 167 (DoDD 6050.7, Environmental Effects Abroad of Major Department of Defense Actions, March 31, 1983).
§ 989.2

1979). To comply with E.O. 12114 and complete the EIAP, the Executive Order, 32 CFR Part 187, and this part must be used together.

(d) Appendix A is a glossary of references, abbreviations, acronyms, and terms. Refer to 40 CFR 1508 for definitions of other terminology used in this part.

[64 FR 38129, July 15, 1999; 66 FR 16868, Mar. 28, 2001]

§ 989.2 Concept.

(a) This part provides a framework on how to comply with NEPA and E.O. 12114 according to Air Force Policy Directive (AFPD) 32–702. The Air Force specific procedures and requirements in this part are intended to be used by Air Force decision-makers to fully comply with NEPA and the EIAP.

(b) Major commands (MAJCOM) provide additional implementing guidance in their supplemental publications to this part. MAJCOM supplements must identify the specific offices that have implementation responsibility and include any guidance needed to comply with this part. All references to MAJCOMs in this part include the Air National Guard Readiness Center (ANGRC) and other agencies designated as "MAJCOM equivalent" by HQ USAF.

§ 989.3 Responsibilities.

(a) Office of the Secretary of the Air Force:

(1) The Deputy Assistant Secretary of the Air Force for Environment, Safety and Occupational Health (SAF/MIQ):

(i) Develops environmental planning policy and provides oversight of the EIAP program.

(ii) Determines the level of environmental analysis required for especially important, visible, or controversial Air Force proposals and approves selected Environmental Assessments (EAs) and all Environmental Impact Statements (EISs) prepared for Air Force actions, whether classified or unclassified, except as specified in paragraph (c)(3) of this section.

(iii) Is the liaison on environmental matters with Federal agencies and national level public interest organizations.

(iv) Ensures appropriate offices in the Office of the Secretary of Defense are kept informed on EIAP matters of Defense-wide interest.

(2) The General Counsel (SAF/GC), provides final legal advice to SAF/MI, HQ USAF, and HQ USAF Environment, Safety and Occupational Health Committee (ESOHC) on EIAP issues.

(3) Office of Legislative Liaison (SAF/LL):

(i) Assists with narrowing and defining key issues by arranging consultations with congressional delegations on potentially sensitive actions.

(ii) Distributes draft and final EISs to congressional delegations.

(iii) Reviews and provides the Office of the Secretary of Defense (OSD) with analyses of the Air Force position on proposed and enrolled legislation and executive department testimony dealing with EIAP issues.

(4) Office of Public Affairs (SAF/PA):

(i) Reviews and clears environmental documents in accordance with Air Force Instruction (AFI) 35–101, Public Affairs Policies and Procedures 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 AFI 35–101.4

(iv) The National Guard Bureau, Office of Public Affairs (NGB/PA), will assume the responsibilities of SAF/PA for the EIAP involving the National Guard Bureau, Air Directorate.

(b) Headquarters U.S. Air Force (HQ USAF). The Civil Engineer (HQ USAF). The Civil Engineer (HQ USAF/ILE) is responsible for execution of the EIAP program. The National Guard Bureau Air Directorate (NGB-CF) oversees the EIAP for Air National Guard actions.

(c) MAJCOMs, the Air National Guard, Field Operating Agencies (FOAs), and Single Manager Programs.

2See footnote 1 to §989.1.

3See footnote 1 to §989.1.

4See footnote 1 to §989.1.
These organizations establish procedures that comply with this part wherever they are the host unit for preparing and using required environmental documentation in making decisions about proposed actions and programs within their commands or areas of responsibility.

(1) Air Force Center for Environmental Excellence (AFCEE). The AFCEE Environmental Conservation and Planning Directorate (AFCEE/EC) is available to provide technical assistance and has the capability to provide contract support to the proponent, EPF, and MAJCOMs in developing EIAP documents.

(2) Air Force Regional Environmental Offices (REOs). REOs review non-Air Force environmental documents that may have an impact on the Air Force. Requests for review of such documents should be directed to the proper REO (Atlanta, Dallas, or San Francisco) along with any relevant comments. The REO:
   (i) Notifies the proponent, after receipt, that the REO is the single point of contact for the Air Force review of the document.
   (ii) Requests comments from potentially affected installations, MAJCOMs, the ANG, and HQ USAF, as appropriate.
   (iii) Consolidates comments into the Air Force official response and submits the final response to the proponent.
   (iv) Provides to HQ USAF/ILEB and the appropriate MAJCOMs and installations a copy of the final response and a complete set of all review comments.

(3) Single Manager Acquisition Programs (system-related NEPA). The proponent Single Manager (i.e., System Program Director, Materiel Group Managers, and Product Group Managers) for all programs, regardless of acquisition category, shall comply with DoD Regulation 5000.2-R. SAF/AQR, as the Air Force Acquisition Executive Office, is the final approval authority for all system-related NEPA documents. SAF/AQR is responsible for accomplishing appropriate Headquarters EPC/ESOHC review. The Single Manager will obtain appropriate Product Center EPC approval prior to forwarding necessary EIAP documents (i.e., Notices of Intent (NOIs) and preliminary draft and final EAs and EISs) to SAF/AQR. The Single Manager will allow for concurrent review of EIAP documents by HQ AFMC/CEV and the Operational Command (HQ ACC, HQ AMC, HQ AFSPC, etc.). The Single Manager is responsible for budgeting and funding EIAP efforts, including EIAP for research, development, testing, and evaluation activities.

(4) Key Air Force environmental participants. The EIAP must be approached as an integrated team effort including key participants within the Air Force and also involving outside federal agencies, state, Tribal, and local governments, interested outside parties, citizens groups, and the general public. Key Air Force participants may include the following functional areas, as well as others:
   - Proponent
   - Civil Engineers/Environmental Planning Function
   - Staff Judge Advocate
   - Public Affairs
   - Medical Service (Bioenvironmental Engineer)
   - Safety Office
   - Range and Airspace Managers
   - Bases and Units
   - Plans and Programs
   - Logistics
   - Personnel
   - Legislative Liaison

(d) Proponent. Each office, unit, single manager, or activity at any level that initiates Air Force actions is responsible for:
   (1) Complying with the EIAP and shall ensure integration of the EIAP during the initial planning stages of proposed actions so that planning and decisions reflect environmental values, delays are avoided later in the process, and potential conflicts are precluded.
   (2) Notifying the EPF of a pending action and completing Section I of AF Form 813, Request for Environmental Impact Analysis. Prepare the Description of Proposed Action and Alternatives (DOPAA) through an interdisciplinary team approach including the EPF and other key Air Force participants.
   (3) Identifying key decision points and coordinating with the EPF on EIAP phasing to ensure that environmental documents are available to the
decision-maker before the final decision is made and ensuring that, until the EIAP is complete, resources are not committed prejudicing the selection of alternatives nor actions taken having an adverse environmental impact or limiting the choice of reasonable alternatives.

(4) Determining, with the EPF, as early as possible whether to prepare an EIS. The proponent and the EPF will conduct an early internal scoping process as part of the EIAP process. The internal scoping process should involve key Air Force environmental participants (see §989.3(c)(4)) and other Air Force offices as needed and conclude with preparation of a DOPAA. For complex or detailed EAs or EISs, an outside facilitator trained in EIAP may be used to focus and guide the discussion. Department of the Air Force personnel, rather than contractors, should generally be used to prepare the DOPAA.

(5) Presenting the DOPAA to the EPC for review and comment.

(6) Coordinating with the EPF, Public Affairs, and Staff Judge Advocate prior to organizing public or inter-agency meetings which deal with EIAP elements of a proposed action and involving persons or agencies outside the Air Force.

(7) Subsequent to the decision to prepare an EIS, assisting the EPF and Public Affairs Office in preparing a draft NOI to prepare an EIS. All NOIs must be forwarded through the MAJCOM EPF to HQ USAF/ILEB for review and publication in the Federal Register. Publication in the Federal Register is accomplished in accordance with AFI 37–120, Federal Register.6 (See §989.17.)

(8) Ensuring that proposed actions are implemented as described in the final EIAP decision documents.

(e) Environmental Planning Function (EPF). At every level of command, the EPF is one of the key Air Force participants responsible for the EIAP. The EPF can be the environmental flight within a civil engineer squadron, a separate environmental management office at an installation, the CEV at MAJCOMs, or an equivalent environmental function located with a program office. The EPF:

1. Supports the EIAP by bringing key participants in at the beginning of a proposed action and involving them throughout the EIAP. Key participants play an important role in defining and focusing key issues at the initial stage.

2. At the request of the proponent, prepares environmental documents using an interdisciplinary approach, or obtains technical assistance through Air Force channels or contract support. assists the proponent in obtaining review of environmental documents.

3. Assists the proponent in preparing a DOPAA and actively supports the proponent during all phases of the EIAP.

4. Evaluates proposed actions and completes Sections II and III of AF Form 813, subsequent to submission by the proponent and determines whether a Categorical Exclusion (CATEX) applies. The responsible EPF member signs the AF Form 813 certification.

5. Identifies and documents, with technical advice from the Bioenvironmental Engineer and other staff members, environmental quality standards that relate to the action under evaluation.

6. Supports the proponent in preparing environmental documents, or obtains technical assistance through Air Force channels or contract support and adopts the documents as official Air Force papers when completed and approved.

7. Ensures the EIAP is conducted on base-level and MAJCOM-level plans, including contingency plans for the training, movement, and operations of Air Force personnel and equipment.

8. Prepares the NOI to prepare an EIS with assistance from the proponent and the Public Affairs Office.

9. Prepares applicable portions of the Certificate of Compliance for each military construction project according to AFI 32–1021, Planning and Programming of Facility Construction Projects.6

10. Submits one hard copy and one electronic copy of the final EA/Finding of No Significant Impact (FONSI) and

5 See footnote 1 to §989.1.
§ 989.4 Initial considerations.

Air Force personnel will:

(a) Consider and document environmental effects of proposed Air Force actions through AF Forms 813, EAs, FONSIs, EISs, RODs, and documents prepared according to E.O. 12114.

(b) Evaluate proposed actions for possible CATEX from environmental impact analysis (appendix B).

(c) Make environmental documents, comments, and responses, including those of other federal agencies, state, Tribal, and local governments, and the public, part of the record available for review and use at all levels of decisionmaking.

(d) Review the specific alternatives analyzed in the EIAP when evaluating the proposal prior to decisionmaking.

(e) Ensure that alternatives to be considered by the decisionmaker are both reasonable and within the range of alternatives analyzed in the environmental documents.

(f) Pursue the objective of furthering foreign policy and national security interests while at the same time considering important environmental factors.

(g) Consider the environmental effects of actions that affect the global commons.

(h) Determine whether any foreign government should be informed of the

(7) For more comprehensive instructions about public affairs activities in environmental matters, see AFI 35-101.7

(i) Medical Service. The Medical Service, represented by the Bioenvironmental Engineer, provides technical assistance to EPFs in the areas of environmental health standards, environmental effects, and environmental monitoring capabilities. The Air Force Armstrong Laboratory, Occupational and Environmental Health Directorate, provides additional technical support.

(j) Safety Office. The Safety Office provides technical review and assistance to EPFs to ensure consideration of safety standards and requirements.

[64 FR 38129, July 15, 1999; 66 FR 16868, Mar. 28, 2001]
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 Deputy Under Secretary of Defense (Environmental Security). This coordination requirement does not apply to informal working-level communications and arrangements.

§ 989.5 Organizational relationships.

(a) The host EPF manages the EIAP using an interdisciplinary team approach. This is especially important for tenant-proposed actions, because the host command is responsible for the EIAP for actions related to the host command’s installations.

(b) The host command prepares environmental documents internally or directs the host base to prepare the environmental documents. Environmental document preparation may be by contract (requiring the tenant to fund the EIAP), by the tenant unit, or by the host. Regardless of the preparation method, the host command will ensure the required environmental analysis is accomplished before a decision is made on the proposal and an action is undertaken. Support agreements should provide specific procedures to ensure host oversight of tenant compliance, tenant funding or reimbursement of host EIAP costs, and tenant compliance with the EIAP regardless of the tenant not being an Air Force organization.

(c) For aircraft beddown and unit realignment actions, program elements are identified in the Program Objective Memorandum. Subsequent Program Change Requests must include AF Form 813.

(d) To ensure timely initiation of the EIAP, SAF/AQ forwards information copies of all Mission Need Statements and System Operational Requirements Documents to SAF/MIQ, HQ USAF/IIEB (or ANGRC/CEV), the Air Force Medical Operations Agency, Aerospace Medicine Office (AFMOA/SG), and the affected MAJCOM EPFs.

(e) The MAJCOM of the scheduling unit managing affected airspace is responsible for preparing and approving environmental analyses.

[64 FR 38129, July 15, 1999; 66 FR 16868, Mar. 28, 2001]

§ 989.6 Budgeting and funding.

Contract EIAP efforts are proponent MAJCOM responsibilities. Each year, the EPF programs for anticipated out-year EIAP workloads based on inputs from command proponents. If proponent offices exceed the budget in a given year or identify unforeseen requirements, the proponent offices must provide the remaining funding.

§ 989.7 Requests from Non-Air Force agencies or entities.

(a) Non-Air Force agencies or entities may request the Air Force to undertake an action, such as issuing a permit or outleasing Air Force property, that may primarily benefit the requester or an agency other than the Air Force. The EPF and other Air Force staff elements must identify such requests and coordinate with the proponent of the non-Air Force proposal, as well as with concerned state, Tribal, and local governments.

(b) Air Force decisions on such proposals must take into consideration the potential environmental impacts of the applicant’s proposed activity (as described in an Air Force environmental document), insofar as the proposed action involves Air Force property or programs, or requires Air Force approval.

(c) The Air Force may require the requester to prepare, at the requester’s expense, an analysis of environmental impacts (40 CFR 1506.5), or the requester may be required to pay for an EA or EIS to be prepared by a contractor selected and supervised by the Air Force. The EPF may permit requesters to submit draft EAs for their proposed actions, except for actions described in §989.16(a) and (b), or for actions the EPF has reason to believe will ultimately require an EIS. For EISs, the EPF has the responsibility to prepare the environmental document, although responsibility for funding remains with the requester. The fact that
§ 989.9 Cooperation and adoption.

(a) Lead and cooperating agency (40 CFR 1501.5 and 1501.6). When the Air Force is a cooperating agency in the preparation of an EIS, the Air Force reviews and approves principal environmental documents within the EIAP as if they were prepared by the Air Force. The Air Force executes a ROD for its program decisions that are based on an EIS for which the Air Force is a cooperating agency. The Air Force may also be a lead or cooperating agency on an EA using similar procedures, but the MAJCOM EPC retains approval authority unless otherwise directed by HQ USAF. Before invoking provisions of 40 CFR 1501.5(e), the lowest authority level possible resolves disputes concerning which agency is the lead agency.

(b) Adoption of EA or EIS. The Air Force, even though not a cooperating agency, may adopt an EA or EIS prepared by another entity where the proposed action is substantially the same as the action described in the EA or EIS. In this case, the EA or EIS must be recirculated as a final EA or EIS but

§ 989.8 Analysis of alternatives.

(a) The Air Force must analyze reasonable alternatives to the proposed action and the “no action” alternative in all EAs and EISs, as fully as the proposed action alternative.

(b) “Reasonable” alternatives are those that meet the underlying purpose and need for the proposed action and that would cause a reasonable person to inquire further before choosing a particular course of action. Reasonable alternatives are not limited to those directly within the power of the Air Force to implement. They may involve another government agency or military service to assist in the project or even to become the lead agency. The Air Force must also consider reasonable alternatives raised during the scoping process (see §989.18) or suggested by others, as well as combinations of alternatives. The Air Force need not analyze highly speculative alternatives, such as those requiring a major, unlikely change in law or governmental policy. If the Air Force identifies a large number of reasonable alternatives, it may limit alternatives selected for detailed environmental analysis to a reasonable range or to a reasonable number of examples covering the full spectrum of alternatives.

(c) The Air Force may expressly eliminate alternatives from detailed analysis, based on reasonable selection standards (for example, operational, technical, or environmental standards suitable to a particular project). In consultation with the EPF, the appropriate Air Force organization may develop written selection standards to firmly establish what is a “reasonable” alternative for a particular project, but they must not so narrowly define these standards that they unnecessarily limit consideration to the proposal initially favored by proponents. This discussion of reasonable alternatives applies equally to EAs and EISs.

(d) Except in those rare instances where excused by law, the Air Force must always consider and assess the environmental impacts of the “no action” alternative. “No action” may mean either that current management practice will not change or that the proposed action will not take place. If no action would result in other predictable actions, those actions should be discussed within the no action alternative section. The discussion of the no action alternative and the other alternatives should be comparable in detail to that of the proposed action.

§ 989.9 Cooperation and adoption.

(a) Lead and cooperating agency (40 CFR 1501.5 and 1501.6). When the Air Force is a cooperating agency in the preparation of an EIS, the Air Force reviews and approves principal environmental documents within the EIAP as if they were prepared by the Air Force. The Air Force executes a ROD for its program decisions that are based on an EIS for which the Air Force is a cooperating agency. The Air Force may also be a lead or cooperating agency on an EA using similar procedures, but the MAJCOM EPC retains approval authority unless otherwise directed by HQ USAF. Before invoking provisions of 40 CFR 1501.5(e), the lowest authority level possible resolves disputes concerning which agency is the lead agency.

(b) Adoption of EA or EIS. The Air Force, even though not a cooperating agency, may adopt an EA or EIS prepared by another entity where the proposed action is substantially the same as the action described in the EA or EIS. In this case, the EA or EIS must be recirculated as a final EA or EIS but
§ 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 Planning9) with the requirements of the EIAP. Prior to making a decision to proceed, the EPF must analyze the environmental impacts that could result from implementation of a proposal identified in the comprehensive plan.

§ 989.12 AF Form 813, Request for Environmental Impact Analysis.
The Air Force uses AF Form 813 to document the need for environmental analysis or for certain CATEX determinations for proposed actions. The form helps narrow and focus the issues to potential environmental impacts. AF Form 813 must be retained with the EA or EIS to record the focusing of environmental issues.

9See footnote 1 to §989.1.
to definitively determine if an EIS is required based on the analysis of environmental impacts. Alternatively, the EPF may choose to bypass the EA and proceed with preparation of an EIS.

(c) An EA is a written analysis that:
(1) Provides analysis sufficient to determine whether to prepare an EIS or a FONSI.
(2) Aids the Air Force in complying with the NEPA when no EIS is required.

(d) The length of an EA should be as short and concise as possible, while matching the magnitude of the proposal. An EA briefly discusses the need for the proposed action, reasonable alternatives to the proposed action, the affected environment, the environmental impacts of the proposed action and alternatives (including the "no action" alternative), and a listing of agencies and persons consulted during preparation. The EA should not contain long descriptions or lengthy, detailed data. Rather, incorporate by reference background data to support the concise discussion of the proposal and relevant issues.

(e) The format for the EA may be the same as the EIS. The alternatives section of an EA and an EIS are similar and should follow the alternatives analysis guidance outlined in §989.8.

(f) The EPF should design the EA to facilitate rapidly transforming the document into an EIS if the environmental analysis reveals a significant impact.

(g) As a finding contained in the draft FONSI, a Finding of No Practicable Alternative (FONPA) must be submitted (five hard copies and an electronic version) to the MAJCOM EPF when the alternative selected could be located in wetlands or floodplains, and must discuss why no other practicable alternative exists to avoid impacts. See AFI 32–7064, Integrated Natural Resources Management.

(h) EAs and accompanying FONSIs that require the Air Force to make Clean Air Act General Conformity Determinations shall be submitted (five hard copies and an electronic version) through the MAJCOM EPF to HQ USAF/ILEB for SAF/MIQ approval. SAF/MIQ signs all General Conformity Determinations and will also sign the companion FONSI, when requested by the MAJCOM (see §989.30).

(i) In cases potentially involving a high degree of controversy or Air Force-wide concern, the MAJCOM, after consultation with HQ USAF/ILEB, may request HQ USAF ESOHC review and approval of an EA, or HQ USAF may direct the MAJCOM to forward an EA (five hard copies and an electronic version) for HQ USAF ESOHC review and approval.

(j) As a minimum, the following EAs require MAJCOM approval because they involve topics of special importance or interest. Unless directed otherwise by HQ USAF/ILEB, the installation EPF must forward the following types of EAs to the MAJCOM EPF along with an unsigned draft FONSI: (MAJCOMs can require other EAs to receive MAJCOM approval in addition to those types specified here.)

(1) All EAs on non-Air Force proposals that require an Air Force decision, such as use of Air Force property for highways, space ports, and joint-use proposals.

(2) EAs where mitigation to insignificance is accomplished in lieu of initiating an EIS (§989.22(c)).

(k) A few examples of actions that normally require preparation of an EA (except as indicated in the CATEX list) include:

(1) Public land withdrawals of less than 5,000 acres.

(2) Minor mission realignments and aircraft beddowns.

(3) New building construction on base within developed areas.

(4) Minor modifications to Military Operating Areas (MOAs), air-to-ground weapons ranges, and military training routes.

(1) The Air Force will involve other federal agencies, state, Tribal, and local governments, and the public in the preparation of EAs (40 CFR 1501.4(b) and 1506.6). The extent of involvement usually coincides with the magnitude and complexity of the proposed action and its potential environmental effect on the area. For proposed actions described in §989.15(e)(2), use either the scoping process described in
§ 989.15 Finding of no significant impact.

(a) The FONSI (40 CFR 1508.13) briefly describes why an action would not have a significant effect on the environment and thus will not be the subject of an EIS. The FONSI must summarize the EA or, preferably, have it attached and incorporated by reference, and must note any other environmental documents related to the action.

(b) If the EA is not incorporated by reference, the FONSI must include:

1. Name of the action.
2. Brief description of the action (including alternatives considered and the chosen alternative).
3. Brief discussion of anticipated environmental effects.
4. Conclusions leading to the FONSI.
5. All mitigation actions that will be adopted with implementation of the proposal (see §989.22).

(c) Keep FONSIs as brief as possible. Only rarely should FONSIs exceed two typewritten pages. Stand-alone FONSIs without an attached EA may be longer.

(d) For actions of regional or local interest, disseminate the FONSI according to §989.24. The MAJCOM and NGB are responsible for release of FONSIs to regional offices of Federal agencies, the state single point of contact (SPOC), and state agencies concurrent with local release by the installations.

(e) The EPF must make the EA and unsigned FONSI available to the affected public and provide the EA and unsigned FONSI to organizations and individuals requesting them and to whomsoever the proponent or the EPF has reason to believe is interested in the action, unless disclosure is precluded for security classification reasons. Draft EAs and unsigned draft FONSIs will be clearly identified as drafts and distributed via cover letter which will explain their purpose and need. The EPF provides a copy of the documents without cost to organizations and individuals requesting them. The FONSI transmittal date (date of letter of transmittal) to the state SPOC or other equivalent agency is the official notification date.

(1) Before the FONSI is signed and the action is implemented, the EPF should allow sufficient time to receive comments from the public. The time period will reflect the magnitude of the proposed action and its potential for controversy. The greater the magnitude of the proposed action or its potential for controversy, the longer the time that must be allowed for public review. Mandatory review periods for certain defined actions are contained in §989.15(e)(2). These are not all inclusive but merely specific examples. In every case where an EA and FONSI are prepared, the proponent and EPF must determine how much time will be allowed for public review. In all cases, other than classified actions, a public review period should be the norm unless clearly unnecessary due to the lack of potential controversy.

(2) In the following circumstances, the EA and unsigned FONSI are made available for public review for at least 30 days before FONSI approval and implementing the action (40 CFR 1501.4(e)(2)):

(i) When the proposed action is, or is closely similar to, one that usually requires preparation of an EIS (see §989.16).

(ii) If it is an unusual case, a new kind of action, or a precedent-setting case in terms of its potential environmental impacts.

(iii) If the proposed action would be located in a floodplain or wetland.

(iv) If the action is mitigated to insignificance in the FONSI, in lieu of an EIS (§989.22(c)).

(v) If the proposed action is a change to airspace use or designation.

(vi) If the proposed action would have a disproportionately high and adverse environmental effect on minority populations and low-income populations.

(f) As a general rule, the same organizational level that prepares the EA also reviews and recommends the FONSI for approval by the EPC. MAJCOMs may decide the level of EA approval and FONSI signature, except as provided in §989.14(g), (h), (i), and (j).
§ 989.16 Environmental impact statement.

(a) Certain classes of environmental impacts normally require preparation of an EIS (40 CFR 1501.4). These include, but are not limited to:

(1) Potential for significant degradation of the environment.

(2) Potential for significant threat or hazard to public health or safety.

(3) Substantial environmental controversy concerning the significance or nature of the environmental impact of a proposed action.

(b) Certain other actions normally, but not always, require an EIS. These include, but are not limited to:

(1) Public land withdrawals of over 5,000 acres (Engle Act, 43 U.S.C. 155 through 158).

(2) Establishment of new air-to-ground weapons ranges.

(3) Site selection of new airfields.

(4) Site selection of major installations.

(5) Development of major new weapons systems (at decision points that involve demonstration, validation, production, deployment, and area or site selection for deployment).

(6) Establishing or expanding supersonic training areas over land below 30,000 feet MSL (mean sea level).

(7) Disposal and reuse of closing installations.

§ 989.17 Notice of intent.

The EPF must furnish, through the MAJCOM, to HQ USAF/ILEB the NOI (40 CFR 1508.22) describing the proposed action for congressional notification and publication in the Federal Register. The EPF, through the host base public affairs office, will also provide the approved NOI to newspapers and other media in the area potentially affected by the proposed action. The EPF must provide copies of the notice to the SPOC and must also distribute it to requesting agencies, organizations, and individuals. Along with the draft NOI, the EPF must also forward the completed DOPAA, through the MAJCOM, to HQ USAF for information.

[64 FR 38129, July 15, 1999; 66 FR 16888, Mar. 28, 2001]

§ 989.18 Scoping.

(a) After publication of the NOI for an EIS, the EPF must initiate the public scoping process (40 CFR 1501.7) to determine the scope of issues to be addressed and to help identify significant environmental issues to be analyzed in depth. Methods of scoping range from soliciting written comments to conducting public scoping meetings (see 40 CFR 1501.7 and 1506.6(e)). The scoping process is an iterative, pro-active process of communicating with individual citizens, neighborhood, community, and local leaders, public interest groups, congressional delegations, state, Tribal, and local governments, and federal agencies. The scoping process must start prior to official public scoping meetings and continue through to preparation of the draft EIS. The purpose of this process is to de-emphasize insignificant issues and focus the scope of the environmental analysis on significant issues (40 CFR 1500.4(g)). Additionally, scoping allows early and more meaningful participation by the public. The result of scoping is that the proponent and EPF determine the range of actions, alternatives, and impacts to be considered in the EIS (40 CFR 1508.25). The EPF must send scripts for scoping meetings to USAF/ILEV (or ANGRC/CEV) no later than 30 days before the first scoping meeting. Scoping meeting plans are similar in content to public hearing plans (see Appendix C). Public scoping meetings should generally be held at locations not on the installation.

(b) Where it is anticipated the proposed action and its alternatives will have disproportionately high and adverse human health or environmental effects on minority populations or low-income populations, special efforts shall be made to reach these populations. This might include special informational meetings or notices in minority and low-income areas concerning the regular scoping process.


§ 989.19 Draft EIS.

(a) Preliminary draft. The EPF supports the proponent in preparation of a preliminary draft EIS (PDEIS) (40 CFR
§ 989.19

1502.9) based on the scope of issues decided on during the scoping process. The format of the EIS must be in accordance with the format recommended in the CEQ regulations (40 CFR 1502.10 and 1502.11). The CEQ regulations indicate that EISs normally contain fewer than 150 pages (300 pages for proposals of unusual complexity). The EPF provides a sufficient number of copies of the PDEIS to HQ USAF/IIEB for HQ USAF ESOHC security and policy review in each member’s area of responsibility and to AFCEE/EC for technical review.

(b) Review of draft EIS. After the HQ USAF ESOHC review, the EPF assists the appropriate Air Force organization in making any necessary revisions to the PDEIS and forwards it to HQ USAF/IIEB as a draft EIS to ensure completion of all security and policy reviews and to certify releasability. Once the draft EIS is approved, HQ USAF/IIEB notifies the EPF to print sufficient copies of the draft EIS for distribution to congressional delegations and interested agencies at least 7 calendar days prior to publication of the Notice of Availability (NOA) in the Federal Register. After congressional distribution, the EPF sends the draft EIS to all others on the distribution list. HQ USAF/IIEB then files the document with the U.S. Environmental Protection Agency (USEPA) and provides a copy to the Deputy Under Secretary of Defense for Environmental Security.

(c) Public review of draft EIS (40 CFR 1502.19 and 1506.6): (1) The public comment period for the draft EIS is at least 45 days starting from the publication date of the NOA of the draft EIS in the Federal Register. USEPA publishes the EISs filed during the preceding week. This public comment period may be extended by the EPF. If the draft EIS is unusually long, the EPF may distribute a summary to the public with an attached list of locations (such as public libraries) where the entire draft EIS may be reviewed. The EPF must distribute the full draft EIS to certain entities, for example, agencies with jurisdiction by law or agencies with special expertise in evaluating the environmental impacts, and anyone else requesting the entire draft EIS (40 CFR 1502.19 and 1506.6).

(2) The EPF sponsors public hearings on the draft EIS according to the procedures in Appendix C to this part. Hearings take place no sooner than 15 days after the Federal Register publication of the NOA and at least 15 days before the end of the comment period. Scheduling hearings toward the end of the comment period is encouraged to allow the public to obtain and more thoroughly review the draft EIS. The EPF must provide hearing scripts to HQ USAF/IIEB (or ANGRC/CEV) no later than 30 days prior to the first public hearing. Public hearings should generally be held at off-base locations. Submit requests to deviate from procedures in Appendix C to this part to HQ USAF/IIEB for SAF/MIQ approval.

(3) Where analyses indicate that a proposed action will potentially have disproportionately high and adverse human health or environmental effects on minority populations or low-income populations, the EPF should make special efforts to ensure that these potentially impacted populations are brought into the review process.

(d) Response to comments (40 CFR 1503.4). The EPF must incorporate in the Final EIS its responses to comments on the Draft EIS by modifying the text and referring in the appendix to where the comment is addressed or providing a written explanation in the comments section, or both. The EPF may group comments of a similar nature together to allow a common response and may also respond to individuals separately.

(e) Seeking additional comments. The EPF may, at any time during the EIS process, seek additional public comments, such as when there has been a significant change in circumstances, development of significant new information of a relevant nature, or where there is substantial environmental controversy concerning the proposed action. Significant new information leading to public controversy regarding the scope of the EIS due to public controversy or changes made as the result of previous
§ 989.20 Final EIS.

(a) If changes in the draft EIS are minor or limited to factual corrections and responses to comments, the proponent and EPF may, with the prior approval of HQ USAF/ILEB and SAF/MIQ, prepare a document containing only comments on the Draft EIS, Air Force responses, and errata sheets of changes staffed to the HQ USAF ESOC for coordination. However, the EPF must submit the Draft EIS and all of the above documents, with a new cover sheet indicating that it is a final EIS (40 CFR 1503.4(c)), to HQ USAF/ILEB for filing with the EPA (40 CFR 1506.9). If more extensive modifications are required, the EPF must prepare a preliminary final EIS incorporating these modifications for coordination within the Air Force. Regardless of which procedure is followed, the final EIS must be processed in the same way as the draft EIS, including receipt of copies of the EIS by SAF/LLP, except that the public need not be invited to comment during the 30-day post-filing waiting period. The Final EIS should be furnished to every person, organization, or agency that made substantive comments on the Draft EIS or requested a copy. Although the EPF is not required to respond to public comments received during this period, comments received must be considered in determining final decisions such as identifying the preferred alternative, appropriate mitigations, or if a supplemental analysis is required.

(b) The EPF processes all necessary supplements to EISs (40 CFR 1502.9) in the same way as the original Draft and Final EIS, except that a new scoping process is not required.

(c) If major steps to advance the proposal have not occurred within 5 years from the date of the Final EIS approval, reevaluation of the documentation should be accomplished to ensure its continued validity.

[64 FR 38129, July 15, 1999; 66 FR 16868, Mar. 28, 2001]

§ 989.21 Record of decision (ROD).

(a) The proponent and the EPF prepare a draft ROD, formally staff it through the MAJCOM EPC, to HQ USAF/ILEB for verification of adequacy, and forwards it to either SAF/MIQ or SAF/AQR, as the case may be, for approval and designation of the signator. A ROD (40 CFR 1505.2) is a concise public document stating what an agency’s decision is on a specific action. The ROD may be integrated into any other document required to implement the agency’s decision. A decision on a course of action may not be made until the later of the following dates:

1. 90 days after publication of the DEIS; or
2. 30 days after publication of the NOA of the Final EIS in the Federal Register.

(b) The Air Force must announce the ROD to the affected public as specified in §989.24, except for classified portions. The ROD should be concise and should explain the conclusion, the reason for the selection, and the alternatives considered. The ROD must identify the course of action, whether it is the proposed action or an alternative, that is considered environmentally preferable regardless of whether it is the alternative selected for implementation. The ROD should summarize all the major factors the agency weighed in making its decision, including essential considerations of national policy.

(c) The ROD must state whether the selected alternative employs all practicable means to avoid, minimize, or mitigate environmental impacts and, if not, explain why.

[64 FR 38129, July 15, 1999; 66 FR 16868, Mar. 28, 2001]

§ 989.22 Mitigation.

(a) When preparing ELAP documents, indicate clearly whether mitigation measures (40 CFR 1508.20) must be implemented for the alternative selected. If using Best Management Practices (BMPs), identify the specific BMPs being used and include those BMPs in the mitigation plan. Discuss mitigation measures in terms of “will” and
§ 989.23 Contractor prepared documents.

All Air Force EIAP documents belong to and are the responsibility of the Air Force. EIAP correspondence and documents distributed outside of the Air Force should generally be signed out by Air Force personnel and documents should reflect on the cover sheet they are an Air Force document. Contractor preparation information should be contained within the document’s list of preparers.

§ 989.24 Public notification.

(a) Except as provided in §989.26, public notification is required for various aspects of the EIAP.

(b) Activities that require public notification include:

1. An EA and FONSI.
2. An EIS NOI.
3. Public scoping meetings.
4. Availability of the draft EIS.
5. Public hearings on the draft EIS (which should be included in the NOA for the draft EIS).
6. Availability of the final EIS.
7. The ROD for an EIS.

(c) For actions of local concern, the list of possible notification methods in 40 CFR 1506.6(b)(3) is only illustrative. The EPF may use other equally effective means of notification as a substitute for any of the methods listed. Because many Air Force actions are of limited interest to persons or organizations outside the Air Force, the EPF may limit local notification to the SPOC, local government representatives, and local news media. For all actions covered under §989.15(e)(2), and for all EIS notices, the public affairs office must purchase with EPF funds an advertisement in a prominent section of the local newspaper(s) of general circulation (not “legal” newspapers or “legal section” of general newspapers).

(d) For the purpose of EIAP, the EPF begins the time period of local notification when it sends written notification

[64 FR 38129, July 15, 1999; 66 FR 16868, Mar. 28, 2001]
to the state SPOC or other equivalent agency (date of letter of notification).

§ 989.25 Base closure and realignment.

Base closure or realignment may entail special requirements for environmental analysis. The permanent base closure and realignment law, 10 U.S.C. 2687, requires a report to the Congress when an installation where at least 300 DoD civilian personnel are authorized to be employed is closed, or when a realignment reduces such an installation by at least 50 percent or 1,000 of such personnel, whichever is less. In addition, other base closure laws may be in effect during particular periods. Such nonpermanent closure laws frequently contain provisions limiting the extent of environmental analysis required for actions taken under them. Such provisions may also add requirements for studies not necessarily required by NEPA.

§ 989.26 Classified actions (40 CFR 1507.3(c)).

(a) Classification of an action for national defense or foreign policy purposes does not relieve the requirement of complying with NEPA. In classified matters, the Air Force must prepare and make available normal NEPA environmental analysis documents to aid in the decision-making process; however, Air Force staff must prepare, safeguard, and disseminate these documents according to established procedures for protecting classified documents. If an EIAP document must be classified, the Air Force may modify or eliminate associated requirements for public notice (including publication in the Federal Register) or public involvement in the EIAP. However, the Air Force should obtain comments on classified proposed actions or classified aspects of generally unclassified actions, from public agencies having jurisdiction by law or special expertise, to the extent that such review and comment is consistent with security requirements. Where feasible, the EPF may need to help appropriate personnel from those agencies obtain necessary security clearances to gain access to documents so they can comment on scoping or review the documents.

(b) Where the proposed action is classified and unavailable to the public, the Air Force may keep the entire NEPA process classified and protected under the applicable procedures for the classification level pertinent to the particular information. At times (for example, during weapons system development and base closures and realignments), certain but not all aspects of NEPA documents may later be declassified. In those cases, the EPF should organize the EIAP documents, to the extent practicable, in a way that keeps the most sensitive classified information (which is not expected to be released at any early date) in a separate annex that can remain classified; the rest of the EIAP documents, when declassified, will then be comprehensible as a unit and suitable for release to the public. Thus, the documents will reflect, as much as possible, the nature of the action and its environmental impacts, as well as Air Force compliance with NEPA requirements.

(c) Where the proposed action is not classified, but certain aspects of it need to be protected by security classification, the EPF should tailor the EIAP for a proposed action to permit as normal a level of public involvement as possible, but also fully protect the classified part of the action and environmental analysis. In some instances, the EPF can do this by keeping the classified sections of the EIAP documents in a separate, classified annex.

(d) For §989.26(b) actions, an NOI or NOA will not be published in the Federal Register until the proposed action is declassified. For §989.26(c) actions, the Federal Register will run an unclassified NOA which will advise the public that at some time in the future the Air Force may or will publicly release a declassified document.

(e) The EPF similarly protects classified aspects of FONSIs, RODs, or other environmental documents that are part of the EIAP for a proposed action, such as by preparing separate classified annexes to unclassified documents, as necessary.

(f) Whenever a proponent believes that EIAP documents should be kept classified, the EPF must make a report of the matter to SAF/MIQ, including proposed modifications of the normal
§ 989.27 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.

§ 989.27 Occupational safety and health.
Assess direct and indirect impacts of proposed actions on the safety and health of Air Force employees and others at a work site. The EIAP document does not need to specify compliance procedures. However, the EIAP documents should discuss impacts that require a change in work practices to achieve an adequate level of health and safety.

§ 989.28 Airspace and range proposals.
(a) EIAP Review. Airspace and range proposals require review by HQ USAF/XOO prior to public announcement and preparation of the DOPAA. Unless directed otherwise, the airspace proponent will forward the DOPAA as an attachment to the proposal sent to HQ USAF/XOO.

(b) Federal Aviation Administration. The DoD and the Federal Aviation Administration (FAA) have entered into a Memorandum of Understanding (MOU) that outlines various airspace responsibilities. For purposes of compliance with NEPA, the DoD is the “lead agency” for all proposals initiated by DoD, with the FAA acting as the “cooperating agency.” Where airspace proposals initiated by the FAA affect military use, the roles are reversed. The proponent’s action officers (civil engineering and local airspace management) must ensure that the FAA is fully integrated into the airspace proposal and related EIAP from the very beginning and that the action officers review the FAA’s responsibilities as a cooperating agency. The proponent’s airspace manager develops the preliminary airspace proposal per appropriate FAA handbooks and the FAA-DoD MOU. The preliminary airspace proposal is the basis for initial dialogue between DoD and the FAA on the proposed action. A close working relationship between DoD and the FAA, through the FAA regional Air Force representative, greatly facilitates the airspace proposal process and helps resolve many NEPA issues during the EIAP.

§ 989.29 Force structure and unit move proposals.
Unless directed otherwise, the MAJCOM plans and programs proponent will forward a copy of all EAs for force structure and unit moves to HQ USAF/ILEB for information only at the preliminary draft and preliminary final stages.

[64 FR 38129, July 15, 1999; 66 FR 16869, Mar. 28, 2001]

§ 989.30 Air quality.
Section 176(c) of the Clean Air Act Amendments of 1990, 42 U.S.C. 7506(c), establishes a conformity requirement for Federal agencies which has been implemented by regulation, 40 CFR 93. Subpart B. All EIAP documents must address applicable conformity requirements and the status of compliance. Conformity applicability analyses and determinations are developed in parallel with EIAP documents, but are separate and distinct requirements and should be documented separately. To increase the utility of a conformity determination in performing the EIAP, the conformity determination should be completed prior to the completion of the EIAP so as to allow incorporation of the information from the conformity determination into the EIAP. See AFI 32-7040, Air Quality Compliance.

§ 989.31 Pollution prevention.
The Pollution Prevention Act of 1990, 42 U.S.C. 13101(b), established a national policy to prevent or reduce pollution at the source, whenever feasible. Pollution prevention approaches should be applied to all pollution-generating activities. The environmental document should analyze potential pollution that may result from the proposed action and alternatives and must discuss potential pollution prevention.

10See footnote 1 to § 989.1.
measures when such measures are feasible for incorporation into the proposal or alternatives. Where pollution cannot be prevented, the environmental analysis and proposed mitigation measures should include, wherever possible, recycling, energy recovery, treatment, and environmentally safe disposal actions (see AFI 32–7080, Pollution Prevention Program\(^\text{11}\)).

\section*{§ 989.32 Noise.}

Aircraft noise data files used for analysis during EIAP will be submitted to HQ AFCEE for review and validation prior to public release, and upon completion of the EIAP for database entry. Utilize the current NOISEMAP computer program for air installations and the Assessment System for Aircraft Noise for military training routes and military operating areas. Guidance on standardized Air Force noise data development and analysis procedures is available from HQ AFCEE/EC. Develop EIAP land use analysis relating to aircraft noise impacts originating from air installations following procedures in AFI 32–7063, Air Installation Compatible Use Zone (AICUZ) Program. Draft EIAP aircraft noise/land use analysis associated with air installations will be coordinated with the MAJCOM AICUZ program manager.

\section*{§ 989.33 Environmental justice.}

During the preparation of environmental analyses under this instruction, the EPF should ensure compliance with the provisions of E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and Executive Memorandum of February 11, 1994, regarding E.O. 12898.

\section*{§ 989.34 Special and emergency procedures.}

(a) Special procedures. During the EIAP, unique situations may arise that require EIAP strategies different than those set forth in this part. These situations may warrant modification of the procedures in this part. EPFs should only consider procedural deviations when the resulting process would benefit the Air Force and still comply with NEPA and CEQ regulations. EPFs must forward all requests for procedural deviations to HQ USAF/ILEB (or ANGRC/CEV) for review and approval by SAF/MIQ.

(b) Emergency procedures (40 CFR 1506.11). Emergency situations do not exempt the Air Force from complying with NEPA, but do allow emergency response while completing the EIAP. Certain emergency situations may make it necessary to take immediate action having significant environmental impact, without observing all the provisions of the CEQ regulations or this part. If possible, promptly notify HQ USAF/ILEB, 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.

\section*{§ 989.35 Reporting requirements.}

(a) EAs, EISs, and mitigation measures will be tracked at bases and MAJCOMs through an appropriate environmental management system.

(b) Proponents, EPFs, and public affairs offices may utilize the World Wide Web, in addition to more traditional means, to notify the public of availability of EAs and EISs. When possible, allow distribution of documents electronically. Public review comments should be required in writing, rather than by electronic mail.

(c) All documentation will be disposed of according to AFMAN 37–139, Records Disposition Schedule.\(^\text{12}\)

\section*{§ 989.36 Waivers.}

In order to deal with unusual circumstances and to allow growth in the NEPA process, SAF/MIQ may grant waivers to those procedures contained

\(^{11}\) See footnote 1 to § 989.1.

\(^{12}\) See footnote 1 to § 989.1.
§ 989.37 Procedures for analysis abroad.

Procedures for analysis of environmental actions abroad are contained in 32 CFR Part 187. That directive provides comprehensive policies, definitions, and procedures for implementing E.O. 12114. For analysis of Air Force actions abroad, 32 CFR Part 187 will be followed.

§ 989.38 Requirements for analysis abroad.

(a) The EPF will generally perform the same functions for analysis of actions abroad that it performs in the United States. In addition to the requirements of 32 CFR Part 187, the following Air Force specific rules apply:

(b) For EAs dealing with global commons (geographic areas beyond the jurisdiction of the United States or any foreign nation), HQ USAF/ILEB will review actions that are above the MAJCOM approval authority. In this instance, approval authority refers to the same approval authority that would apply to an EA in the United States. The EPF documents a decision not to do an EIS.

(c) For EISs dealing with the global commons, the EPF provides sufficient copies to HQ USAF/ILEB for the HQ USAF ESOHC review and AFCCEE/EC technical review. After ESOHC review, the EPF makes a recommendation as to whether the proposed draft EIS will be released as a draft EIS.

(d) For environmental studies and environmental reviews, forward, when appropriate, environmental studies and reviews to HQ USAF/ILEB for coordination among appropriate federal agencies. HQ USAF/ILEB makes environmental studies and reviews available to the Department of State and other interested federal agencies, and, upon request, to the United States public, in accordance with 32 CFR Part 187. HQ USAF/ILEB also may inform interested foreign governments or furnish copies of studies, in accordance with 32 CFR Part 187.

[64 FR 38129, July 15, 1999; 66 FR 16869, Mar. 28, 2001]

APPENDIX A TO PART 989—GLOSSARY OF REFERENCES, ABBREVIATIONS, ACRONYMS, AND TERMS

References

Legislative
10 U.S.C. 2687, Base Closures and Realignment
42 U.S.C. 7506(c), Clean Air Act Amendments of 1990
42 U.S.C. 13161(b), Pollution Prevention Act of 1990
43 U.S.C. 155–158, Endless Act

Executive Orders

Executive Order 11988, Floodplain Management, May 24, 1977
Executive Order 11990, Protection of Wetlands, May 24, 1977
Executive Order 12088, Federal Compliance with Pollution Control Standards.
Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, January 4, 1979
Executive Order 12372, Intergovernmental Review of Federal Programs, July 14, 1982
Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994

U.S. Government Agency Publications

Council on Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act, 40 CFR parts 1500–1508
Department of Defense Directive (DoDD) 4715.1, Environmental Security
Department of Defense Directive (DoDI) 4715.9, Environmental Planning and Analysis
DoDD 5000.1, Defense Acquisition
Department of Defense Instruction (DoDI) 5000.2–R, Mandatory Procedures for Major Defense Acquisition Programs and Major Automated Information System Acquisition Programs
### Abbreviation or Acronym

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<th>Abbreviation or Acronym</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>AFCEE</td>
<td>Air Force Center for Environmental Excellence</td>
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<tr>
<td>AFCEE/EC</td>
<td>Air Force Center for Environmental Excellence/Environmental Conservation and Planning Directorate</td>
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<tr>
<td>AFIF</td>
<td>Air Force Instruction</td>
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<tr>
<td>AFLSA/JACE</td>
<td>Air Force Legal Services Agency/Environmental Law and Litigation Division</td>
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<tr>
<td>AFLSA/JAJT</td>
<td>Air Force Legal Services Agency/Trial Judiciary Division</td>
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<tr>
<td>AFMAN</td>
<td>Air Force Manual</td>
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<tr>
<td>AFMOA/SG</td>
<td>Air Force Medical Operations Agency/Aerospace Medicine Office</td>
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<tr>
<td>AFPD</td>
<td>Air Force Policy Directive</td>
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<td>AFRES</td>
<td>Air Force Reserve</td>
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<td>ANG</td>
<td>Air National Guard</td>
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<td>AMRC</td>
<td>Air National Guard Readiness Center</td>
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<td>BMP</td>
<td>Best Management Practice</td>
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<td>CATEX</td>
<td>Categorical Exclusion</td>
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<tr>
<td>CEQ</td>
<td>Council on Environmental Quality</td>
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<tr>
<td>CFR</td>
<td>Code of Federal Regulations</td>
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<tr>
<td>DoD</td>
<td>Department of Defense</td>
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<tr>
<td>DoDD</td>
<td>Department of Defense Directive</td>
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<tr>
<td>DoDI</td>
<td>Department of Defense Instruction</td>
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<tr>
<td>DPA</td>
<td>Description of Proposed Action and Alternatives</td>
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<tr>
<td>EAA</td>
<td>Environmental Assessment</td>
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<tr>
<td>EIAP</td>
<td>Environmental Impact Analysis Process</td>
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<tr>
<td>EIS</td>
<td>Environmental Impact Statement</td>
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<tr>
<td>E.O.</td>
<td>Executive Order</td>
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<td>EPA</td>
<td>Environmental Protection Agency</td>
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<td>EPS</td>
<td>Environmental Protection Committee</td>
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<td>EPC</td>
<td>Environmental Planning Function</td>
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<td>ESOC</td>
<td>Environmental Safety and Occupational Health Committee</td>
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<tr>
<td>FAA</td>
<td>Federal Aviation Administration</td>
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<tr>
<td>FEIS</td>
<td>Final Environmental Impact Statement</td>
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<td>FOA</td>
<td>Field Operating Agency</td>
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<tr>
<td>FODA</td>
<td>Finding of No Practicable Alternative</td>
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<tr>
<td>FONS</td>
<td>Finding of No Significant Impact</td>
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<tr>
<td>GSA</td>
<td>General Services Administration</td>
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<tr>
<td>HQ AFMC</td>
<td>Headquarters, Air Force Material Command</td>
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<tr>
<td>HQ USAF</td>
<td>Headquarters, United States Air Force</td>
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<tr>
<td>HQ USAF/IPE</td>
<td>The Air Force Civil Engineer</td>
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<tr>
<td>MAJCOM</td>
<td>Major Command</td>
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<td>MGM</td>
<td>Materiel Group Manager</td>
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<td>MOA</td>
<td>Military Operating Area</td>
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<td>MOU</td>
<td>Memorandum of Understanding</td>
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<td>MSL</td>
<td>Mean Sea Level</td>
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<td>NEPA</td>
<td>National Environmental Policy Act of 1969</td>
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<tr>
<td>NGB-CC</td>
<td>National Guard Bureau Civilian Corps</td>
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<td>NGB-GF</td>
<td>National Guard Bureau Air Directorate</td>
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<tr>
<td>NGB-JA</td>
<td>National Guard Bureau Office of the Staff Judge Advocate</td>
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<td>NGB-PA</td>
<td>National Guard Bureau Office of Public Affairs</td>
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<td>NOA</td>
<td>Notice of Availability</td>
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<td>NOI</td>
<td>Notice of Intent</td>
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<tr>
<td>OEO</td>
<td>Office of the Secretary of Defense</td>
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<td>OSHA</td>
<td>Occupational Safety and Health Administration</td>
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<tr>
<td>PDEIS</td>
<td>Preliminary Draft Environmental Impact Statement</td>
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<tr>
<td>PGM</td>
<td>Product Group Manager</td>
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<tr>
<td>REG</td>
<td>Air Force Regional Environmental Office</td>
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<tr>
<td>ROD</td>
<td>Record of Decision</td>
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<tr>
<td>SAF/ACR</td>
<td>Deputy Assistant Secretary of the Air Force (Science, Technology, and Engineering)</td>
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<tr>
<td>SAF/CC</td>
<td>Air Force Civil Counsel</td>
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<tr>
<td>SAF/FIH</td>
<td>Air Force Office of Legislative Liaison</td>
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<tr>
<td>SAF/GA</td>
<td>Air Force Office of Manpower, Reserve Affairs, Installations, and Environment</td>
</tr>
<tr>
<td>SAF/JA</td>
<td>Air Force Office of the Staff Judge Advocate</td>
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<td>Air Force Office of Public Affairs</td>
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<tr>
<td>SJA</td>
<td>Staff Judge Advocate</td>
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</table>
**Terms**

**NOTE:** All definitions in the CEQ Regulations, 40 CFR part 1508, apply to this part. In addition, the following definitions apply:

**Best Management Practices (BMPs)**—Under the EIAP, BMPs should be applied in furtherance of 40 CFR 1508.22, Mitigations or to fulfill permit requirements (see also E.O. 12088, “Federal Compliance with Pollution Control Standards).

**Description of Proposed Action and Alternatives (DOPAA)**—An Air Force document that is the framework for assessing the environmental impact of a proposal. It describes the purpose and need for the action, the alternatives to be considered, and the rationale used to arrive at the proposed action. The DOPAA often unfolds as writing progresses. The DOPAA can change during the internal scoping and public scoping process, especially as ideas and issues become clearer, and as new information makes changes necessary.

**Environmental Impact Analysis Process (EIAP)**—The Air Force program that implements the requirements of NEPA and requirements for analysis of environmental effects abroad under E.O. 12114.

**Finding of No Practicable Alternative (FONPA)**—Finding contained in a FONSI or ROD, according to Executive Orders 11988 and 11990, that explains why there are no practicable alternatives to an action affecting a wetland or floodplain, based on appropriate EIAP analysis or other documentation.

**Interdisciplinary**—An approach to environmental analysis involving more than one discipline or branch of learning.

**Pollution Prevention**—“Source reduction,” as defined under the Pollution Prevention Act, and other practices that reduce or eliminate pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or in the protection of natural resources by conservation.

**Proponent**—Any office, unit, or activity that proposes to initiate an action.

**Scoping**—A process for proposing alternatives to be addressed and for identifying the significant issues related to a proposed action. Scoping includes affirmative efforts to communicate with other federal agencies, state, Tribal, and local governments, and the public.

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**Abbreviation or Acronym** | **Definition**
---|---
SM | Single Manager
SPD | Single Program Director
SPOC | Single Point of Contact
TDY | Temporary Duty

**Single Manager**—Any one of the Air Force designated weapon system program managers, that include System Program Directors (SPDs), Product Group Managers (PGMs), and Materiel Group Managers (MGMs).

**United States**—All states, commonwealths, the District of Columbia, territories and possessions of the United States, and all waters and airspace subject to the territorial jurisdiction of the United States. The territories and possessions of the United States include American Samoa, Guam, Johnston Atoll, Kingman Reef, Midway Island, Navassa Island, Palmyra Island, the Virgin Islands, and Wake Island.

[64 FR 38129, July 15, 1999; 66 FR 16869, Mar. 28, 2001]

**APPENDIX B TO PART 989—CATEGORICAL EXCLUSIONS**

**A2.1. Proponent/EPF Responsibility**

Although a proposed action may qualify for a categorical exclusion from the requirements for environmental impact analysis under NEPA, this exclusion does not relieve the EPF or the proponent of responsibility for complying with all other environmental requirements related to the proposal, including requirements for permits, and state regulatory agency review of plans.

**A2.2. Additional Analysis**

Circumstances may arise in which usually categorically excluded actions may have a significant environmental impact and, therefore, may generate a requirement for further environmental analysis. Examples of situations where such unique circumstances may be present include:

- **A2.2.1. Actions of greater scope or size than generally experienced for a particular category of action.**
- **A2.2.2. Potential for degradation (even though slight) of already marginal or poor environmental conditions.**
- **A2.2.3. Initiating a degrading influence, activity, or effect in areas not already significantly modified from their natural condition.**
- **A2.2.4. Use of unproved technology.**
- **A2.2.5. Use of hazardous or toxic substances that may come in contact with the surrounding environment.**
A2.2.6. Presence of threatened or endangered species, archaeological remains, historical sites, or other protected resources.
A2.2.7. Proposals adversely affecting areas of critical environmental concern, such as prime or unique agricultural lands, wetlands, coastal zones, wilderness areas, floodplains, or wild and scenic river areas.
A2.2.8. Proposals with disproportionately high and adverse human health or environmental effects on minority populations or low-income populations.

A2.3. CATEX List

Actions that are categorically excluded in the absence of unique circumstances are:

A2.3.1. Routine procurement of goods and services.
A2.3.2. Routine Commissary and Exchange operations.
A2.3.3. Routine recreational and welfare activities.
A2.3.4. Normal personnel, fiscal or budgeting, and administrative activities and decisions including those involving military and civilian personnel (for example, recruiting, processing, paying, and records keeping).
A2.3.5. Preparing, revising, or adopting regulations, instructions, directives, or guidance documents that do not, themselves, result in an action being taken.
A2.3.6. Preparing, revising, or adopting regulations, instructions, directives, or guidance documents that implement (without substantial change) the regulations, instructions, directives, or guidance documents from higher headquarters or other Federal agencies with superior subject matter jurisdiction.
A2.3.7. Continuation or resumption of pre-existing actions, where there is no substantial change in existing conditions or existing land uses and where the actions were originally evaluated in accordance with applicable law and regulations, and surrounding circumstances have not changed.
A2.3.8. Performing interior and exterior construction within the 5-foot line of a building without changing the land use of the existing building.
A2.3.9. Repairing and replacing real property installed equipment.
A2.3.10. Routine facility maintenance and repair that does not involve disturbing significant quantities of hazardous materials such as asbestos and lead-based paint.
A2.3.11. Actions similar to other actions which have been determined to have an insignificant impact in a similar setting as established on an EIS or an EA resulting in a FONS.I. 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 in-grants (50 acres or less) for activities otherwise subject to CATEX. The EPF must document application of this CATEX on AF Form 813.
A2.3.17. Transferring land, facilities, and personal property for which the General Services Administration (GSA) is the action agency. Such transfers are excluded only if there is no change in land use and GSA complies with its NEPA requirements.
A2.3.18. Transferring administrative control of real property within the Air Force or to another military department or to another Federal agency, not including GSA, including returning public domain lands to the Department of the Interior.
A2.3.19. Granting easements, leases, licenses, rights of entry, and permits to use Air Force controlled property for activities that, if conducted by the Air Force, could be categorically excluded in accordance with this Appendix. The EPF must document application of this CATEX on AF Form 813.
A2.3.20. Converting in-house services to contract services.
A2.3.21. Routine personnel decreases and increases, including work force conversion to either on-base contractor operation or to military operation from contractor operation (excluding base closure and realignment actions which are subject to congresional reporting under 10 U.S.C. 2687).
A2.3.22. Routine, temporary movement of personnel, including deployments of personnel on a TDY basis where existing facilities are used.
A2.3.23. Personnel reductions resulting from workload adjustments, reduced personnel funding levels, skill imbalances, or other similar causes.
A2.3.24. Study efforts that involve no commitment of resources other than personnel and funding allocations.

A2.3.25. The analysis and assessment of the environmental impacts for purposes of cleanup of Environmental Restoration Account (ERA) activities to support remedial action activities to support remedial action. This CATEX includes the granting of any permits necessary for such surveys, provided that the technology or procedure involved is well understood and there are no adverse environmental impacts anticipated from it. The EPF must document application of this CATEX on AF Form 813.

A2.3.26. Undertaking specific investigatory activities to support remedial action activities for purposes of cleanup of Environmental Restoration Account (ERA)—Air Force and Resource Conservation and Recovery Act (RCRA) corrective action sites. These activities include soil borings and sampling, installation, and operation of test or monitoring wells. This CATEX applies to studies that assist in determining final cleanup actions when they are conducted in accordance with legal agreements, administrative orders, or work plans previously agreed to by EPA or state regulators.

A2.3.27. Normal or routine basic and applied scientific research confined to the laboratory and in compliance with all applicable safety, environmental, and natural resource conservation laws.

A2.3.28. Routine transporting of hazardous materials and wastes in accordance with applicable Federal, state, interstate, and local laws.

A2.3.29. Emergency handling and transporting of small quantities of chemical survey material or suspected chemical survey material, whether or not classified as hazardous or toxic waste, from a discovery site to a permitted storage, treatment, or disposal facility.

A2.3.30. Immediate responses to the release or discharge of oil or hazardous materials in accordance with an approved Spill Prevention and Response Plan or Spill Contingency Plan or that are otherwise consistent with the requirements of the National Contingency Plan.

A2.3.31. Relocating a small number of aircraft to an installation with similar aircraft that does not result in a significant increase of total flying hours or the total number of aircraft operations, a change in flight tracks, or an increase in permanent personnel or logistics support requirements at the relocating installation. Repetitive use of this CATEX at an installation requires further analysis to determine there are no cumulative impacts. The EPF must document application of this CATEX on AF Form 813.

A2.3.32. Temporary (for less than 30 days) increases in air operations up to 50 percent of the typical installation aircraft operation rate or increases of 50 operations a day, whichever is greater. Repetitive use of this CATEX on AF Form 813.

A2.3.33. Flying activities that comply with the Federal aviation regulations, that are dispersed over a wide area and that do not frequently (more than once a day) pass near the same ground points. This CATEX does not cover regular activity on established routes or within special use airspace.

A2.3.34. Supersonic flying operations over land and above 30,000 feet MSL, or over water and above 10,000 feet MSL and more than 15 nautical miles from land.

A2.3.35. Formal requests to the FAA, or host-nation equivalent agency, to establish or modify special use airspace (for example, restricted areas, warning areas, military operating areas) and military training routes for subsonic operations that have a base altitude of 3,000 feet above ground level or higher. The EPF must document application of this CATEX on AF Form 813, which must accompany the request to the FAA.

A2.3.36. Adopting airfield approach, departure, and en route procedures that are less than 3,000 feet above ground level, and that also do not route air traffic over noise-sensitive areas, including residential neighborhoods or cultural, historical, and outdoor recreational areas. The EPF may categorically exclude such air traffic patterns at or greater than 3,000 feet above ground level regardless of underlying land use.

A2.3.37. Participating in ‘‘air shows’’ and fly-overs by Air Force aircraft at non-Air Force public events after obtaining FAA coordination and approval.

A2.3.38. Conducting Air Force ‘‘open houses’’ and similar events, including air shows, golf tournaments, home shows, and the like, where crowds gather at an Air Force Installation, so long as crowd and traffic control, etc., have not in the past presented significant safety or environmental impacts.

A2.3.39. Conducting Air Force ‘‘military air shows’’ 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.

A3.1.1. The Office of the Judge Advocate General, through the Air Force Legal Services Agency/Trial Judiciary Division (AFLSA/JAJT) and its field organization, is responsible for conducting public hearings and assuring verbatim transcripts are accomplished.

A3.1.2. The EPF, with proponent, AFLSA/JAJT, and Public Affairs support, establishes the date and location, arranges for hiring the court reporter, funds temporary duty
costs for the hearing officer, makes logistical arrangements (for example, publishing notices, arranging for press coverage, obtaining tables and chairs, etc.).

A3.1.3. The procedures outlined below have proven themselves through many prior applications. However, there may be rare instances when circumstances warrant conducting public hearings under a different format, e.g., public-town meeting, information booths, third party moderator, etc. In these cases, forward a request with justification to deviate from these procedures to HQ USAF/ILEVP for SAF/MIQ approval.

A3.2. Notice of Hearing (40 CFR 1506.6)

A3.2.1. Public Affairs officers:
A3.2.1.1. Announce public hearings and assemble a mailing list of individuals to be invited.
A3.2.1.2. Distribute announcements of a hearing to all interested individuals and agencies, including the print and electronic media.
A3.2.1.3. Place a newspaper display advertisement announcing the time and place of the hearing as well as other pertinent particulars.
A3.2.1.4. Distribute the notice in a timely manner so it will reach recipients or be published at least 15 days before the hearing date. Distribute notices fewer than 15 days before the hearing date when you have substantial justification and if the justification for a shortened notice period appears in the notice.
A3.2.1.5. Develop and distribute news release.
A3.2.2. If an action has effects of national concern, publish notices in the Federal Register and mail notices to national organizations that have an interest in the matter.
A3.2.2.1. Because of the longer lead time required by the Federal Register, send out notices for publication in the Federal Register to arrive at HQ USAF/ILEB 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. A suggestion that speakers submit (in writing or by return call) their intention to participate, with an indication of which environmental impact (or impacts) they wish to address.
A3.2.3.5. Any limitation on the length of oral statements.
A3.2.3.6. A suggestion that speakers submit statements of considerable length in writing.
A3.2.3.7. A summary of the proposed action.
A3.2.3.8. The location where the draft EIS and any appendices are available for examination.

A3.3. Availability of the Draft EIS to the Public.

The EPF makes copies of the Draft EIS available to the public at an Air Force installation and other reasonably accessible place in the vicinity of the proposed action and public hearing (e.g., public library).

A3.4. Place of the Hearing

The EPF arranges to hold the hearing at a time and place and in an area readily accessible to military and civilian organizations and individuals interested in the proposed action. Generally, the EPF should arrange to hold the hearing in an off-base civilian facility, which is more accessible to the public.

A3.5. Hearing Officer

A3.5.1. The AFLSA/JAJT selects a military trial judge to preside over hearings. The hearing officer does not need to have personal knowledge of the project, other than familiarity with the Draft EIS. In no event should the hearing officer be a judge advocate from the proponent or subordinate command, be assigned to the same installation with which the hearing is concerned, or have participated personally in the development of the project, or have rendered legal advice or assistance with respect to it (or be expected to do so in the future). The principal qualification of the hearing officer should be the ability to conduct a hearing as an impartial participant.

A3.5.2. The primary duties of the hearing officer are to make sure that the hearing is orderly, is recorded, and that interested parties have a reasonable opportunity to speak. The presiding officer should direct the speakers' attention to the purpose of the hearing, which is to consider the environmental impacts of the proposed project. Speakers should have a time limit to ensure maximum public input to the decision-maker.

A3.6. Record of the Hearing

The EIS preparation team must make sure a verbatim transcribed record of the hearing is prepared, including all stated positions, all questions, and all responses. The EIS preparation team should append all written submissions that parties provide to the hearing officer during the hearing to the record as attachments. The EIS preparation team should also append a list of persons who spoke at the hearing and submitted written comments and a list of the organizations or interests they represent with addresses. The EIS preparation team must make sure a verbatim transcript of the hearing is provided to the EPF for inclusion as an appendix to
the Final EIS. The officer should also ensure that all persons who request a copy of the transcript get a copy when it is completed. Copying charges are determined according to 40 CFR 1506.6(f).

A3.7. Hearing Format

Use the format outlined below as a general guideline for conducting a hearing. Hearing officers should tailor the format to meet the hearing objectives. These objectives provide information to the public, record opinions of representative groups, and examine the impacts of the proposed action, and set out alternatives for improving the EIS and for later consideration.

A3.7.1. Record of Attendees. The hearing officer should make a list of all persons who wish to speak at the hearing to help the hearing officer in calling on these individuals. The officer should provide an accurate transcript for 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 areas(s) they wish to address. The hearing officer can then use the cards to call on individuals who desire to make statements. However, the hearing officer will not deny entry to the hearing or the right to speak to people who decline to submit this information on cards.

A3.7.2. Introductory Remarks. The hearing officer should first introduce himself or herself and the EIS preparation team. Then the hearing officer should make a brief statement on the purpose of the hearing and give the general ground rules on how it will be conducted. This is the proper time to welcome any dignitaries who are present. The hearing officer should explain that he or she does not make any recommendation or decision on whether the proposed project should be continued, modified, or abandoned or how the EIS should be prepared.

A3.7.3. Explanation of the Proposed Action. The Air Force EIS preparation team representative should next explain the proposed action, the alternatives, the potential environmental consequences, and the EIAP.

A3.7.4. Questions by Attendees. After the EIS team representative explains the proposed action, alternatives, and consequences, the hearing officer should give attendees a chance to ask questions to clarify points they may not have understood. The EIS preparation team may have to reply in writing, at a later date, to some of the questions. While the Air Force EIS preparation team should be as responsive as possible in answering questions about the proposal, they should not become involved in debate with questioners over the merits of the proposed action. Cross-examination of speakers, either those of the Air Force or the public, is not the purpose of an informal hearing. If necessary, the hearing officer may limit questioning or conduct portions of the hearing to ensure proper lines of inquiry. However, the hearing officer should include all questions in the hearing record.

A3.7.5. Statement of Attendees. The hearing officer must give the persons attending the hearing a chance to present oral or written statements. The hearing officer should be sure the recorder has the name and address of each person who submits an oral or written statement. The officer should also permit the attendees to submit written statements within a reasonable time, usually two weeks, following the hearing. The officer should allot a reasonable length of time at the hearing for receiving oral statements. The officer may waive any announced time limit at his or her discretion. The hearing officer may allow those who have not previously indicated a desire to speak to identify themselves and be recognized only after those who have previously indicated their intentions to speak have spoken.

A3.7.6. Ending or Extending a Hearing. The hearing officer has the power to end the hearing if the hearing becomes disorderly, if the speakers become repetitive, or for other good cause. In any such case, the hearing officer must make a statement for the record on the reasons for terminating the hearing. The hearing officer may also extend the hearing beyond the originally announced date and time. The officer should announce the extension to a later date or time during the hearing for receiving oral statements. The hearing officer may 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 for receiving oral statements. The hearing officer may 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 for receiving oral statements. 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 for receiving oral statements. The hearing officer may also extend the hearing beyond the originally announced date and time.

A3.7.8. 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.