

Office of the Secretary of Defense

§ 47.3

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PART 47—ACTIVE DUTY SERVICE FOR CIVILIAN OR CONTRACTUAL GROUPS

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THE ADVISORY PANEL

AUTHORITY: 38 U.S.C. 106 note.

SOURCE: 54 FR 39993, Sept. 29, 1989, unless
otherwise noted.

§ 47.1 Purpose.

This document:

(a) Revises 32 CFR part 47 and implements Public Law 95-202.

(b) Directs the Secretary of the Air Force to determine if an established group of civilian employees or contract workers provided service to the U.S. Armed Forces in a manner considered active military service for Department of Veterans Affairs (VA) benefits.

(c) Establishes the DoD Civilian/Military Service Review Board and the Advisory Panel.

(d) Establishes policy, assigns responsibilities, prescribes application procedures for groups and individuals, and clarifies the factors used to determine active duty (AD) service.

§ 47.2 Applicability and scope.

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, and by agreement with the Department of Transportation (DoT), the U.S. Coast Guard.

(b) Applies to any group application considered under Public Law 95-202

after September 11, 1989 and to any individual who applies for discharge documents as a member of a group recognized by the Secretary of the Air Force.

§ 47.3 Definitions.

Armed conflict. A prolonged period of sustained combat involving members of the U.S. Armed Forces against a foreign belligerent. The term connotes more than a military engagement of limited duration or for limited objectives, and involves a significant use of military and civilian forces.

(a) Examples of armed conflict are World Wars I and II, and the Korean and Vietnam Conflicts.

(b) Examples of military actions that are not armed conflicts are as follows:

(1) The incursion into Lebanon in 1958, and the peacekeeping force there in 1983 and 1984.

(2) The incursions into the Dominican Republic in 1965 and into Libya in 1986.

(3) The intervention into Grenada in 1983.

Civilian or contractual group. An organization similarly situated to the Women's Air Forces Service Pilots (a group of Federal civilian employees attached to the U.S. Army Air Force in World War II). Those organization members rendered service to the U.S. Armed Forces during a period of armed conflict in a capacity that was then considered civilian employment with the Armed Forces, or the result of a contract with the U.S. Government, to provide direct support to the Armed Forces.

Recognized group. A group whose service the Secretary of the Air Force administratively has determined to have been "active duty for the purposes of all laws administered by the Department of Veterans Affairs"; i.e., VA benefits under 38 U.S.C. 101.

Similarly situated. A civilian or contractual group is similarly situated to the Women's Air Forces Service Pilots when it existed as an identifiable group at the time the service was being rendered to the U.S. Armed Forces during a period of armed conflict. Persons who individually provided support through civilian employment or contract, but

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who were not members of an identifiable group at the time the services were rendered, are not “similarly situated” to the Women’s Air Forces Service Pilots of World War II.

§ 47.4 Policy.

(a) *Eligibility for consideration.* To be eligible to apply for consideration under Public Law 95-202 and this part, a group must:

(1) Have been similarly situated to the Women’s Air Forces Service Pilots of World War II.

(2) Have rendered service to the United States in what was considered civilian employment with the U.S. Armed Forces either through formal Civil Service hiring or less formal hiring if the engagement was created under the exigencies of war, or as the result of a contract with the U.S. Government to provide direct support to the U.S. Armed Forces.

(3) Have rendered that service during a period of armed conflict.

(4) Consist of living persons to whom VA benefits can accrue.

(5) Not have already received benefits from the Federal Government for the service in question.

(b) A determination of AD service that is considered to be equivalent to active military service is made on the extent to which the group was under the control of the U.S. Armed Forces in support of a military operation or mission during an armed conflict. The extent of control exerted over the group must be similar to that exerted over military personnel and shall be determined by, but not necessarily limited to, the following:

(1) *Incidents favoring equivalency—(i) Uniqueness of service.* Civilian service (civilian employment or contractual service) is a vital element of the war-fighting capability of the Armed Forces. Civilian service during a period of armed conflict is not necessarily equivalent to active military service, even when performed in a combat zone. Service must be beyond that generally performed by civilian employees and must be occasioned by unique circumstances. For civilian service to be recognized under this part, the following factors must be present:

(A) The group was created or organized by U.S. Government authorities to fill a wartime need or, if a group was not created specifically for a wartime need, but existed before that time, then its wartime mission was of a nature to substantially alter the organization’s prewar character.

(B) If the application is based on service in a combat zone, the mission of the group in a combat zone must have been substantially different from the mission of similar groups not in a combat zone.

(ii) *Organizational authority over the group.* The concept of military control is reinforced if the military command authority determines such things as the structure of the civilian organization, the location of the group, the mission and activities of the group, and the staffing requirements to include the length of employment and pay grades of the members of the group.

(iii) *Integration into the military organization.* Integrated civilian groups are subject to the regulations, standards, and control of the military command authority.

(A) Examples include the following:

(1) Exchanging military courtesies.

(2) Wearing military clothing, insignia, and devices.

(3) Assimilating the group into the military organizational structure.

(4) Emoluments associated with military personnel; i.e., the use of commissaries and exchanges, and membership in military clubs.

(B) A group fully integrated into the military would give the impression that the members of the group were military, except that they were paid and accounted for as civilians.

(C) Integration into the military may lead to an expectation by members of the group that the service of the group imminently would be recognized as active military service. Such integration acts in favor of recognition.

(iv) *Subjection to military discipline.* During past armed conflicts, U.S. military commanders sometimes restricted the rights or liberties of civilian members as if they were military members.

(A) Examples include the following:

(1) Placing members under a curfew.

(2) Requiring members to work extended hours or unusual shifts.